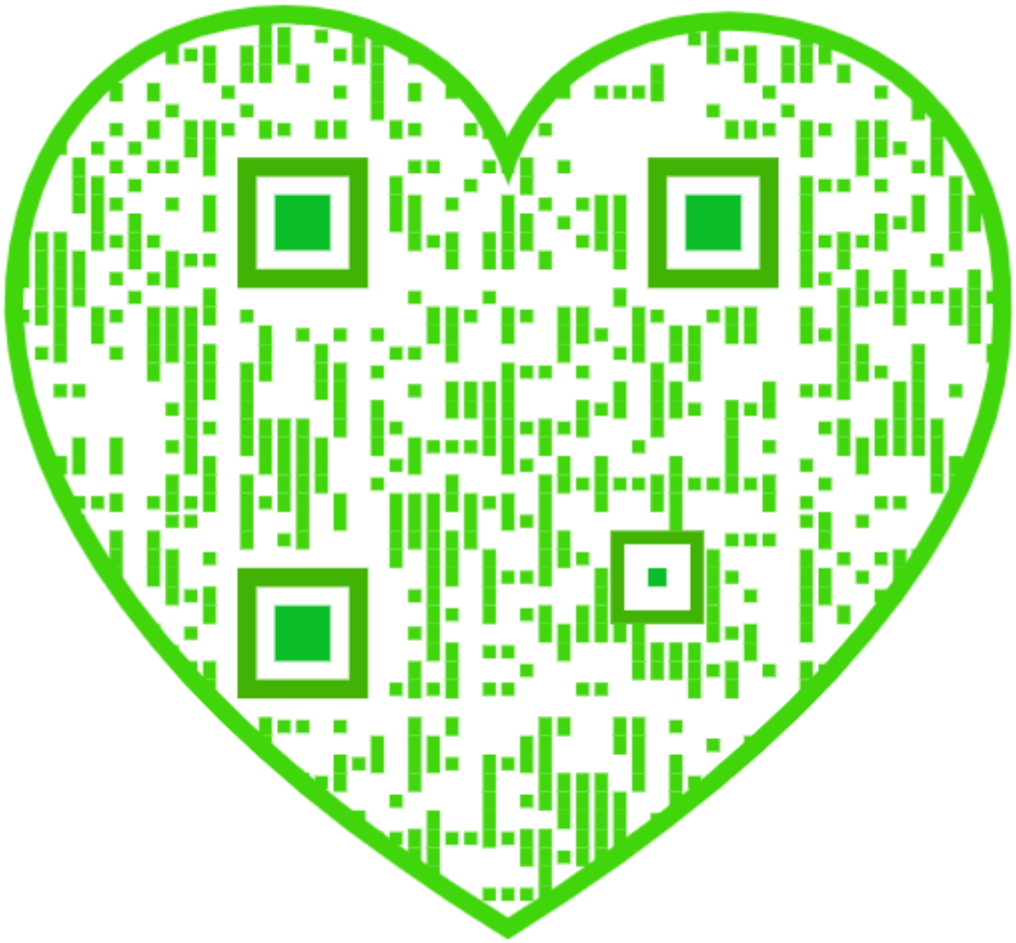
HISTORY AND CIVICS OF OKLAHOMA

ABBOTT



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HISTORY AND CIVICS OF OKLAHOMA

BY

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EDMOND, OKLAHOMA

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HISTORY OF OKLAHOMA

PREFACE

While Oklahoma is the youngest of the states, yet it had a considerable population almost a generation earlier than any of the states west of those that border the Mississippi, Texas alone excepted. Here we find much the best example of a prolonged effort of the aborigines of the United States to develop their own civilization in their own way. The history of this effort should be of interest to every student of American institutions. How much of this civilization was due to white influence and how much can be credited to Indian initiative must be left to the judgment of the reader.

One of the chief benefits of historical study is the testing of authorities. No field offers a better opportunity for this than Oklahoma history. Almost all data relating to the Indian nations is so interwoven with myth and fiction that it is difficult, indeed, to separate authoritative facts from endless legends and weird tales of Indian life. So while this little book is presented in concise, and we trust simple, form, yet we have zealously sought to use in its preparation no source that will not bear most careful scrutiny. We have not hesitated, where possible, to incorporate the exact text of the source in order that the student will thus be brought in closer touch with the men and events that we seek to picture.

L. J. ABBOTT

EDMOND, OKLAHOMA

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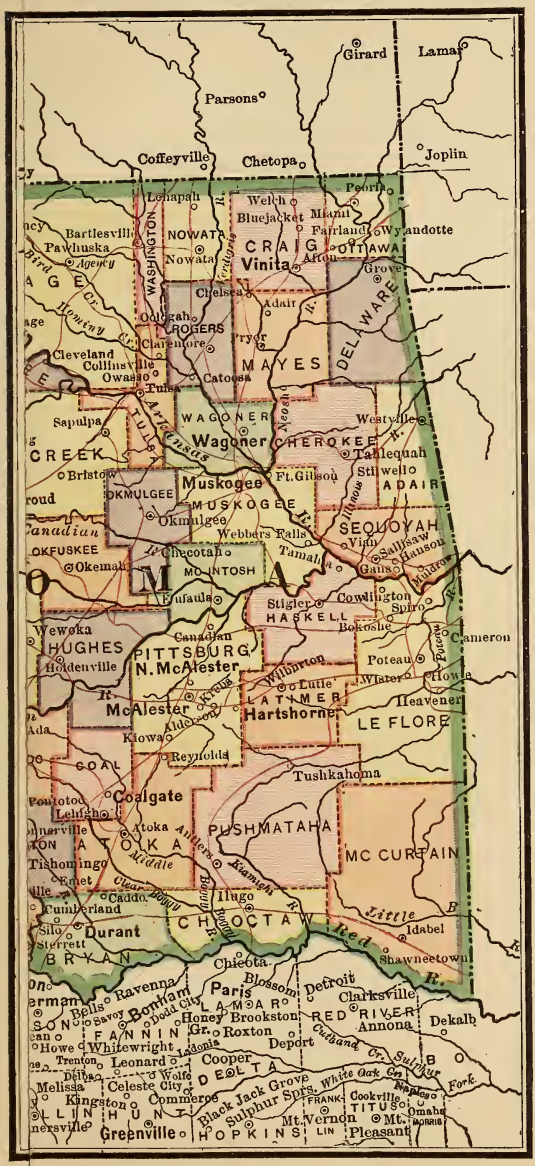
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Coffeyville
Chetopa
Joplin
Lenapah
Welch
Peoria
Bluejacket
Miami
Fairland
Wyandotte
Bartlesville
Pawhuska
NOWATA
CRAIG
OTTAWA
Nowata
Vinita
Afton
Grove
Agency
Chelsea
Adair
Claremore
Pryor
MAYES
DELAWARE
Cleveland
Collinsville
Owasso
Catoosa
Tulsa
WAGONER
Westville
Sapulpa
Wagoner
CHEROKEE
Tahlequah
Bristow
Ft. Gibson
Stilwell
ADAIR
OKMULGEE
Muskogee
MUSKOGEE
Okmulgee
Webbers Falls
SEQUOYAH
Vian
Gans
Canadian
OKFUSKEE
Okemah
Checotah
Tamaha
MCINTOSH
Eufaula
Stigler
Cowlington
Spiro
HASKELL
Wewoka
Bokoshe
Canadian
HUGHES
PITTSBURG
Cameron
Holdenville
N. McAlester
Poteau
Wister
Howe
Latus
Wilburton
Luffe
LATIMER
Heavener
McAlester
Hartshorne
LE FLORE
Ada
Kiowa
Alderson
Reynolds
COAL
Tushkahoma
Coalgate
Lehigh
PUSHMATAHA
Atoka
Antlers
MC CURTAIN
Tishomingo
Kiamichi
Caddo
Ilago
Cumberland
Little
Red
Durant
Idabel
Silo
Sterrett
CHOCTAW
BRYAN
Shawneetown
Chicota
Blossom
Detroit
Ravenna
Paris
Clarksville
Bells
Bonham
LAMAR
RED RIVER
Honey Gr.
Brookston
Annona
Dekalb
Savoy
Dodd City
FANNIN
Roxton
Whitewright
Ladonia
Deport
Cuthand Gr.
Sulphur Fork
Howe
Trenton
Leonard
Cooper
DELTA
Dime
Wolfe City
Celeste
Commerce
Black Jack Grove
White Oak Cr.
Melissa
Kingston
Sulphur Spgs.
FRANKLIN
Cookville
TITUS
Omaha
Mt. Vernon
Mt. Pleasant
HUNT
HOPKINS
Greenville

OKLAHOMA
SCALE OF MILES
0 10 20 30 40 50 60 70 80 90 100
County Towns
Railroads
TEXAS
BEAVER
CIMARRON
HARPER
WOODS
ALFALFA
GRANT
KAY
NOBLE
PONCA
OSAGE
PAWNEE
CRAIG
OTTAWA
NOWATA
WASHINGTON
DELAWARE
MAYES
ROGERS
WAGONER
CHEROKEE
ADAIR
SEQUOYAH
MUSKOGEE
OKMULGEE
CREEK
PAWNEE
GARFIELD
ENID
MAJOR
WOODWARD
ELLIS
DEWEY
BLAINE
KINGFISHER
LOGAN
PAYNE
STILLWATER
GUTHRIE
LINCOLN
OKLAHOMA
SHAWNEE
POTTAWATOMIE
CLEVELAND
PITTSBURG
HUGHES
COAL
LATIMER
LE FLORE
HARTSHORNE
MCALESTER
PUSHMATAHA
MC CURTAIN
CHOCTAW
ATOKA
JOHNSTON
MURRAY
GARVIN
STEPHENS
JEFFERSON
CARTER
LOVE
MARSHALL
BRYAN
DURANT
DENISON
SHERMAN
GRAYSON
FANNIN
LAMAR
RED RIVER
BOWIE
TEXAS
CIMARRON
TEXAS
DALLAM
SHERMAN
HANSFORD
OCHILTREE
LIPSCOMB
HARTLEY
MOORE
HUTCHINSON
ROBERTS
HEMPHILL
OLDHAM
POTTER
CARSON
GRAY
WHEELER
DEAF SMITH
RANDALL
ARMSTRONG
DONLEY
COLLINGSWORTH
PARMER
CASTRO
SWISHER
HALL
CHILDRESS
BAILEY
LAMB
HALE
FLOYD
MOTLEY
COTTLE
FOARD
HARDEMAN
WILBARGER
WICHITA
CLAY
ARCHER
BAYLOR
KNOX
KING
DICKENS
CROSBY
HOCKLEY
LUBBOCK
YOAKUM
TERRY
LYNN
GARZA
KENT
STONEWALL
HASKELL
THROCKMORTON
YOUNG
JACK
WISE
DENTON
COLLIN
HUNT
HOPKINS
CADDO
GREER
KIOWA
JACKSON
TILLMAN
COMANCHE
CALDWELL
HARMON
WASHITA
BECKHAM
ROGER MILLS
CUSTER
GREER
Enid
Perry
Stillwater
Guthrie
Oklahoma
Shawnee
Norman
Purcell
Chickasha
Anadarko
Lawton
Frederick
Altus
Duncan
Pauls Valley
Wynnewood
Ardmore
Durant
Coalgate
McAlester
Hartshorne
Muskogee
Wagoner
Vinita
Miami
Ponca City
Blackwell
Newkirk
Tonkawa
Cherokee
Alva
Woodward
Guymon
Hooker
Beaver
Buffalo
Gate
Meade
Hugoton
Liberal
Kingman
Caldwell
Winfield
Arkansas City
Coffeyville
Chetopa
Parsons
Girard
Lamar
Joplin
Pryor
Claremore
Tulsa
Sapulpa
Bristow
Drumright
Cushing
Kingfisher
Watonga
Hennessey
Okarche
Kingfisher
Geary
Weatherford
Clinton
Elk City
Sayre
Cordell
Cloud Chief
Mangum
Granite
Hobart
Snyder
Altus
Quanah
Vernon
Wichita Falls
Iowa Park
Archer City
Seymour
Knox City
Throckmorton
Graham
Jacksboro
Chico
Decatur
Bridgeport
Weatherford
Cleburne
Granbury
Glen Rose
Stephenville
Dublin
Comanche
Hamilton
Gatesville
Waco
Mexia
Groesbeck
Corsicana
Ennis
Waxahachie
Midlothian
Cleburne
Alvarado
Joshua
Burleson
Venus
Grandview
Cleburne
Fort Worth
Arlington
Grand Prairie
Dallas
Irving
Carrollton
Farmers Branch
Addison
Plano
Richardson
Garland
Mesquite
Rowlett
Sachse
Wylie
Lavon
Farmersville
Celina
Prosper
Frisco
McKinney
Melissa
Anna
Van Alstyne
Howe
Tioga
Gainesville
Muenster
Valley View
Callisburg
Whitesboro
Tom Bean
Sherman
Denison
Pottsboro
Sadler
Howe
Bells
Honey Grove
Ladonia
Fannindel
Paris
Chisholm
Detroit
Clarksville
Annona
Dekalb
Bogata
Clarksville
Red River
Texarkana
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Talihina
Wister
Poteau
Heavener
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Miami
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Collinsville
Skiatook
Hominy
Pawhuska
Bartlesville
Dewey
Nowata
Welch
Bluejacket
Fairland
Wyandotte

HISTORY OF OKLAHOMA

CHAPTER I

DISCOVERY OF OKLAHOMA

1. Francisco Vasquez de Coronado. In the early summer of the year 1541 Francisco Vasquez de Coronado crossed the entire length of what is now the state of Oklahoma. Thus it will be seen that Oklahoma was explored less than a half century after the landing of Columbus, and seventy-nine years before the Pilgrim Fathers saw Plymouth Rock.

2. The "Seven Cities of Cibola." Early in the year 1540 Coronado assembled an army at Culiacan on the Gulf of California (see map, p. 3), consisting of three hundred Spaniards and eight hundred Mexican Indians. He was bent on the conquest of the famous "seven cities of Cibola," rumors of which were frequent in New Spain. A priest named Marcos de Nizza accompanied him as guide. This priest had previously been sent to verify the story of Cabeza de Vaca.[1] He claimed to have seen these famous cities, and

[1] De Vaca had gone to Florida with Narvaez in 1528. He and three companions were the only ones who escaped the perils that overtook that expedition. After wandering nine years on the plains of Texas, they finally made their way to the Spanish settlements in Mexico. De Vaca reported having seen great cities toward the north (see Fourteenth Ethnology Report, Washington, 1893). Translations are here given of most of the sources that have to do with Coronado's expedition. For five cents any one can obtain from the directors of the Old South Work, Boston, a portion of De Vaca's *Relacion*, Leaflet No. 39. Leaflet No. 20 is one of Coronado's letters to Mendoza, the governor of Mexico. Coronado's letter to Charles V can be had for ten cents from Parker P. Simmons, New York. It is American History Leaflet No. 13.

it was expected that he could lead the way directly to them. Marcos did not remain with the expedition long, however, for as they proceeded and it became evident that the facts were contrary to his report, the soldiers threatened to kill him. Coronado tells us in his letter to Mendoza that "it grieved the whole company that a thing so highly commended, and whereof the Father (Marcos) had made so great brags, should be found so contrary, and it made them suspect that all the rest would fall out in like sort." [1] This is what did eventually happen. The famous cities of Cibola proved to be miserable New Mexican pueblos, probably the Zuñi villages of to-day. But Coronado did not immediately relax his efforts to find other cities. He sent out expeditions in all directions. The Grand Canyon of the Colorado was visited; a naval expedition that accompanied him discovered the mouth of the Colorado River; and one of his captains went east to the Rio Grande.

3. Discovery of Oklahoma. The report from the River Tiguex (Rio Grande) seemed so encouraging that Coronado moved his entire army to the little villages scattered along this stream. Irrigation was here practiced to a considerable extent, and the Indians of this region were more nearly civilized than any previously met north of Mexico. There were also villages east of the Rio Grande, on the Pacos River, which were likewise subdued. The Indians resented the long stay and the rough treatment of the Spaniards, with the result that there was some hard fighting in which both natives and Spaniards received injuries. Finally, in April, 1541, Coronado was induced to proceed still further eastward in

[1] Coronado's letter to Mendoza, Old South Leaflet No. 20, p. 2. This letter is a copy of the original translation by Richard Hakluyt.

the hope of finding the rich cities his imagination had so long pictured. "So he started with the whole army and proceeded a hundred and fifty leagues"[1] toward the southeast from the village of Cicuique on the Pacos River. This must certainly have taken the Spaniards into northern Texas, probably

Coronado's Route, 1540–1541, and Routes of Others who explored Oklahoma

somewhere in the vicinity of the present city of Fort Worth, because a journey four hundred and fifty miles (one hundred and fifty leagues) from the settlement on the Pacos to the southeast could not but lead one into this vicinity. Moreover, Coronado at this time must have been somewhere in Texas, because the army visited a village where Cabeza de Vaca and Dorantes had stopped when they were wandering in this

[1] American History Leaflet No. 13, p. 8.

region;[1] and from De Vaca's account we are reasonably certain that the point where the lines of travel of these two explorers crossed was in north-central Texas.

4. Quivira. On account of lack of food and the exhausted condition of both men and horses, Coronado ordered their return to the Rio Grande; but he himself, with thirty of the best equipped men, struck out due north[2] in search of a

Grass Tepee of the Wichita Indians (Caddo County), similar to those described by Coronado in his Letter to the Emperor Charles V

province called Quivira, of which he had been told by the Indians. "And with only the thirty horsemen whom I took for my escort," Coronado wrote in a letter to the emperor

[1] Winship, George Park, The Journey of Coronado (New York, 1904), p. 68. Here is given Castañeda's report. He was historian of the expedition, and his account is much the most elaborate that we have.

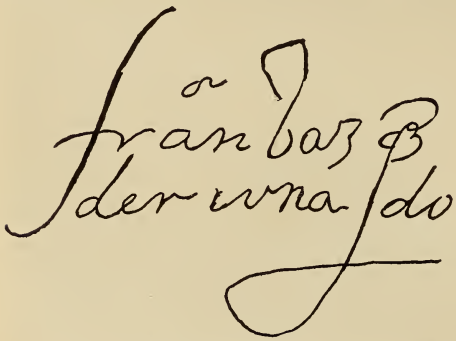
[2] "By the needle" is how it is expressed in the original, American History Leaflet No. 13, p. 8.

Charles V,[1] "I traveled for forty-two days after I left the force, living all this while solely on the flesh of the bulls and cows which we killed." Coronado complained that in Quivira, which evidently was somewhere in central Kansas, the houses were not of stone, as the guide had led him to believe, but of straw. This corresponds with present customs, since straw houses are even now made by the Wichita Indians in Oklahoma. Coronado described the Plains Indians accurately, explaining how they used tents made of skins of the cows (buffaloes), and how they employed dogs as beasts of burden to drag their tent poles.[2] He considered the land of Quivira, which is in the vicinity of the Blue and Kansas rivers, the best he had "ever seen for producing all the products of Spain, for besides the land itself being very fat and black and being very well watered by the rivulets and springs and rivers, I have found prunes like those of Spain, and nuts and very good sweet grapes and mulberries . . . and what I am sure of is that there is not any gold nor any other metal in all this country, and the other things of which they had told me are nothing but little villages and in many of these they do not plant anything and do not have any houses except of skins and sticks, and they wander about with the cows."[3]

5. Result of the Expedition. Coronado returned to Tiguex (that is, the Rio Grande) by a much shorter route, as may be seen by consulting the map (p. 3). The letter which he wrote to the emperor on October 20, 1541, is most pathetic, for no one knew better than he that he would be blamed for not finding gold and rich cities where none were to be found.

[1] American History Leaflet No. 13, p. 13.
[2] Horses were not known in America until the Spanish brought them.
[3] American History Leaflet No. 13, p. 14.

According to the one criterion of success at court, he had failed. And all Coronado's endurance in this, the greatest land journey ever made by a Spanish explorer, went for nothing because he had failed to uncover new supplies of the yellow metal. But this much Coronado's expedition did accomplish. It proved to the Spanish that the vast plain of central North America was merely an agricultural region, uninhabited save by a few wandering tribes of Indians. It did not appeal to the Spanish, who chiefly sought regions where large quantities of silver and gold were to be found. Coronado did his work so thoroughly that no other Spaniard ever felt called upon to venture into these vast solitudes. As General Simpson has well said of it, "For extent of distance travelled, duration in time, and the multiplicity of its coöperating expeditions, it equalled, if it did not exceed, any land expedition that has been undertaken in modern times."



Francisco Vasquez de Coronado's Signature from a Tracing

6. The "Panhandle" becomes Spanish Territory. However, in one particular the expedition did have a more lasting effect. The "Panhandle" of Oklahoma became Spanish territory, and remained such up to the time of the Mexican revolution (1821). When Coronado finally gave up in despair and withdrew his army from the Rio Grande, priests

remained, both on the Pacos and Rio Grande, to convert the natives. Some of these were killed, but others came to join those who escaped harm, and from that time the Spaniards held this country, and with it the " Panhandle " of Oklahoma. It is only just to note that the Spanish, while probably moved to make this expedition chiefly for the sake of booty and gold, yet showed themselves to be intensely religious. There were always priests to remain and Christianize a region which the Spanish warriors had conquered.

CHAPTER II

THE FRENCH IN OKLAHOMA

7. The French in Canada. The Spanish, as we have seen, came into Oklahoma by an almost direct route from the nearest white settlement in Mexico. The French reached Oklahoma by means of the far distant and apparently impossible route of the St. Lawrence River and the Great Lakes. However, a glance at a map of North America will convince one that when the French reached the mouth of the St. Lawrence, they had stumbled upon the most accessible and best roadway into the heart of North America. As early as 1503 French fishermen began to frequent the banks of Newfoundland; Verrazano was in the Gulf of St. Lawrence in 1524, and ten years later Cartier ascended the river as far as Montreal.

8. The Mississippi Valley. The French were most energetic explorers. By 1673 Father Marquette had crossed over from the Great Lakes to the Wisconsin River, and had explored the upper reaches of the "Father of Waters." Seven years later La Salle went down the Mississippi to its mouth, and French dominion in the great river valley began to be established.

9. New Orleans Founded. The discovery of the mouth of the Mississippi soon brought the French into the Gulf of Mexico. The swamps and marshes at the river's mouth being unsuited for settlement, Iberville, a famous French Canadian, planted the first French Gulf colony at Biloxi in 1702. Later

this colony moved up Mobile Bay to the present site of Mobile. But it was not until Bienville, a brother of Iberville, had founded New Orleans, in 1717, that French dominion on the lower Mississippi seemed likely to become permanent. This city, admirably located at the most available point where river and ocean trade could meet, was easily the key to the situation.

10. French Trappers in Oklahoma. The French had a marvelous faculty for getting on with the Indians. If we except the Iroquois, we can say that they had practically no Indian enemies. This security permitted them to spread out, and, unlike the English, they were everywhere and nowhere in particular. In their birch-bark canoes they invaded almost every tributary of the Mississippi searching for furs. Being on good terms with the Indians, they needed no strong forts, and they were not compelled to wait for their numbers to increase before advancing into the continent. Consequently they have left us few evidences of their transitory occupation of the region; but we have strong proof that they were in Oklahoma as early as the founding of New Orleans, and possibly earlier.

11. Proof that the French came into Oklahoma. Since the French used the rivers and creeks as their highways, they would naturally give them names. This they did, for in eastern Oklahoma we to-day find many streams bearing French names.[1]

[1] Let us enumerate a few of these which it is hardly possible could have been named by one not French. They are taken from a map of 1831 which shows Oklahoma as a part of Arkansas Territory. Arkansas (Arc, Kans): *Arc*, French for "bow" or "bend"; *Kans*, the tribe of Indians (Kaw or Kansas) that dwelt in this vicinity. Verdigris River. Grande: French for "large." Illinois: plains. Sallisaw (French, *salaison*, "salt meat"): where some Frenchmen once stopped to salt some buffalo meat (see Nuttall, p. 231). Cavaniol Creek and Mountains. Fourche Melane Creek. Sans Bois Creek and Mountains. Ozarks (French, *aux arcs*, "with bows"): Indians were seen here "with bows" when the French first came into the region. Poteau River: French, *poteau*, "post."

Another evidence that the French had been familiar with the regions now comprised within the limits of the present state of Oklahoma is that all the early American explorers of this section repeatedly refer to them. Moreover, Frenchmen and half-breed French were numerous in this region when Americans first came into the territory. So while there is no doubt that most of eastern Oklahoma was well known to many early French traders and hunters, they have left us almost no record of their sojourns in this region.

12. The Louisiana Purchase. France had been in possession of the Mississippi Valley hardly a half century, when she was forced to surrender all her American possessions except a few West Indian islands. England, under the brilliant leadership of William Pitt the Elder, completely blasted French colonial aspirations in America. Canada and all the region east of the Mississippi River were ceded to Great Britain at the close of the Seven Years' War (French and Indian War). Spain, inveigled into the war by Louis XV, was given Louisiana to compensate her for the loss of Florida, which England had also seized. So far as Oklahoma is concerned, these years of Spanish rule have in no way affected the state's history. There seems to be not one thing, other than the treaty itself, to show that Spain came into possession of this territory. In 1800 it went back to France again. The overshadowing influence of Napoleon Bonaparte had by this time made itself felt in Spain, as elsewhere in Europe, and by the treaty of San Ildefonso Louisiana was ceded back to France. Napoleon had visions of establishing a vast colonial empire. In 1801 he sent his brother-in-law, Leclerc, to Santo Domingo with thirty thousand French soldiers to reduce the negro insurrection in that island and then to proceed to New Orleans,

where Marshall Victor had already preceded him. But Napoleon reckoned without his host. Toussaint L'Ouverture, leader of the slave revolt in the French colony of Haiti, proved more than a match for the trained veterans of France. What Toussaint could not accomplish, fever did. Leclerc died, his regiments were decimated, and Napoleon had no army with which to take possession of Louisiana.

13. Napoleon not wanted for a Neighbor. Jefferson, at that time President of the United States, was greatly alarmed when he learned that the French were about to occupy New Orleans. He did not want Napoleon for a neighbor. "The day that France takes possession of New Orleans," he wrote, "fixes the sentence which is to restrain her forever within her low-water mark. From that moment we marry ourselves to the British fleet and nation."[1] As if to justify this change of front by the old friend of France, the Spanish Intendent (governor), still in charge at New Orleans, on October 16, 1802, withdrew from the Americans the "right of deposit," by which shippers from the upper regions of the Mississippi could store goods in New Orleans until they could be "transshipped." Nor were the Americans to be allowed any longer to receive cargoes from abroad, without first paying the Spanish duty.[2] If the country was to pass into the hands of France and the Mississippi to be closed, it seemed essential to Jefferson that we should obtain the island of New Orleans, or West Florida, and with it Mobile. In 1803 James Monroe was sent to France to secure this cession. But the day after Monroe arrived in Paris, Robert Livingston, the resident minister to France,

[1] Quoted in Hart, A. B., Formation of the Union (New York, 1907), p. 186.

[2] It is to be observed that while France obtained Louisiana in 1800, the actual transfer of the colony from France to Spain never took place.

had closed a treaty, not for the island of New Orleans, or West Florida, but for the whole of Louisiana. Monroe was at first amazed at a purchase so different from Jefferson's idea, but he joined with Livingston in signing the treaty that made Louisiana, and therefore the greater part of Oklahoma, a part of the United States. The reverses experienced by the French soldiers in Haiti had dampened the colonial ardor of Napoleon. He saw the difficulty in holding Louisiana, and since his ambition was to win a European rather than an American empire, he lightly offered for eighty million francs that which had cost him so little.

14. Abstract of the United States' Title to Oklahoma. Thus runs the title to Oklahoma: to France by occupation in 1717; France to Spain in 1763; Spain to France in 1800; France to the United States in 1803. The title to the Panhandle, however, runs in a different way: to Spain by exploration in 1541 and settlement (at Santa Fe) soon after; Spain to Mexico in 1821; Mexico to Texas in 1836; Texas to the United States in 1845.

CHAPTER III

EXPLORATION OF THE ARKANSAS

15. Early Explorations. During the French and Spanish occupations of Louisiana various expeditions were doubtless made into the region now included within the present limits of Oklahoma. On one of Pike's maps we find the information that "at the mouth of the Canadian River the Ensigns Armoral of France were buried in a leaden box at the foot of a great oak in 1742." St. Denis and La Harp may have been in Oklahoma, but if they were, their stay was so brief that nothing of permanence was left to bear witness to it.

16. Wilkinson explores the Arkansas. No sooner had Thomas Jefferson obtained possession of the vast reaches of Louisiana than he sent out expedition after expedition to see what it contained. The exploration of the Northwest by Lewis and Clark (1804) was, perhaps, the most famous of these expeditions, but that of Montgomery Pike was of scarcely less importance. Pike pushed up the Missouri to the Osage River. He followed this stream for a time, and then moved across Kansas up the Arkansas valley into Colorado, finally going into New Mexico, where he was taken prisoner by the Spanish. When Pike struck the Arkansas in central Kansas in the fall of 1806, his lieutenant, James Wilkinson, was in poor health, and he was allowed to return home by way of this river. Wilkinson began his trip, October 27, 1806.[1]

[1] Coues, Elliott, The Expedition of Zebulon Montgomery Pike (3 vols., New York, 1895), Vol. II, p. 547. The diary of Wilkinson is here given in full.

17. Clermont and the Osages of the Oaks. After many hardships Wilkinson and his companions made their way down the Arkansas into Oklahoma. Christmas Day, 1806, he must have spent at the village of the Osages on the Verdigris. This tribe of "Osages of the Oaks" had seceded from the Grand Osages of Missouri in 1801 or 1802, and, according to reliable evidence, under the leadership of Clermont, "builder of cities," at that time constituted Oklahoma's only permanent residents.[1] Lieutenant Wilkinson also mentions villages of Choctaws, Creeks, and Cherokees in the neighborhood of the Osage village, and notes that these three tribes were at war with the Osages (see sect. 98). Just below Webber Falls he met an Osage war party and received from them a man named M'Farlane, who had been trapping on the Poteau. But it was a week later, and not

[1] Coues, Elliott, The Expedition of Zebulon Montgomery Pike, Vol. II, pp. 556–557. The entry in Wilkinson's diary is as follows: "I arrived on the 23d inst., in a storm of hail and snow, at the winter camp of Cas-he-seg-ra or Big Track (or Big Foot), chief of the Osages who reside on the Verdigris river. On the following day I gave him your talk and received his reply, which it is unnecessary to recount fully, as it was merely a description of his poverty and miserable situation. He however said that he had been informed the United States intended to erect factories (i.e. trading posts) on the Osage river, and that he was anxious to have one near his own village, and for that purpose he was willing to give the United States the tract of country lying between the Verdigris and Grand rivers. About fifty-eight or sixty miles up the Osage river is situated the Osage village. This band, some four or five years since, were led by the chief Cas-he-seg-ra (Big Foot) to the waters of the Arkansas, at the request of Pierre Chouteau, for the purpose of securing their trade, the exclusive trade of the Osage river having, at that time, been purchased from the Spanish governor by Manuel Lisa of St. Louis. But though Cas-he-seg-ra be the nominal leader, Clermont, Builder of Towns, is the greatest warrior and most influential man, now more firmly attached to the interests of the Americans than any other chief of the nation. He is the lawful sovereign of the Grand Osages, but his hereditary right was usurped by Pahuska or White Hair (Cheveux Blancs), while Clermont was yet an infant."

until Wilkinson was well into Arkansas, that he mentions meeting a white resident of the region. "On the evening of the 6th of January (1807) I reached the plantation of a Mr. Labomme, and was more inhospitably treated than by the savages themselves." [1]

18. The Spanish interfere with Americans. The same year (1806) that Pike went west through Kansas, Major Richard Sparks was to explore Red River from its mouth westward; and somewhere in the mountains he was to meet Pike, who expected to return with him by way of this river. But the Spanish learned of these proposed expeditions and at once intervened to stop them. One Captain Viana was dispatched from Nacogdoches to turn back Sparks, and Don Facundo Malgares was sent from Santa Fe to intercept Pike. The Spanish captain, Viana, met Sparks somewhere east of the Oklahoma line and compelled him to return. Malgares met with less success. After leaving Santa Fe he marched down Red River seven hundred miles, turned north, and crossed Oklahoma to the Arkansas River. Here he left about half of his five hundred men and marched north into north-central Kansas, to the Pawnee village on the Republican River. Among other presents, each Indian tribe was given Spanish flags and medals. These flags Pike found floating in the breeze at the tepee of the Pawnee chief when he arrived, and it took no little persuasion to induce the chief to remove them. Pike would also have been compelled to return, had not Malgares retired south into Oklahoma when the Americans crossed his trail. But Pike escaped this time only to fall prisoner later to the genial and kindly Malgares. He confused the sources of the Red

[1] Expedition of Pike, Vol. II, p. 559.

River with those of the Rio Grande, got into Spanish territory, and was eventually taken prisoner[1] (sect. 25).

19. Expedition to the Salt Plains. The next expedition of which I can find any record is that of Colonel George C. Sibley, United States Indian agent at Fort Clark (formerly called Fort Osage). Bradbury, the scientist, in his "Travels in the Interior of America," tells us that in June, 1810, he met Mr. Sibley, who "had returned a few days before from his tour to the Arkansas, to examine the vast bodies of salt in the neighborhood of that river. He very politely furnished us with extracts from his journal."[2] In this journal Sibley gives a vivid description of the great salt plains of the Cimarron, and also tells of the Osage village on the Verdigris. He met Clermont, head chief of the Osages of the Oaks, south of the Arkansas and had an interview with him. But, like Wilkinson, Sibley makes no mention of white men living in this country.

20. Fort Smith Founded. In reality there is no data to lead one to believe that white people had settled in Oklahoma prior to the founding of Fort Smith in 1817. The location for this army post was selected by Major S. H. Long in the fall of that year. He named the post Belle Point because of its beautiful location at the mouth of the Poteau, in a bend of the Arkansas River, just outside the boundary of Oklahoma. This fort was not established to protect white settlers, but to restrain the Osages and Cherokees in the persistent strife that had existed between them ever since the latter had begun to settle in Arkansas (sect. 98).

[1] Coues, Expedition of Zebulon M. Pike, p. 413; also see index, under Malgares.

[2] Bradbury, Travels in the Interior of America in the Years 1809, 1810, 1811 (London, 1819); Thwaites, R. G., Early Western Travels (Cleveland, 1905), Vol. V, p. 191.

21. Glenn's Trading House. Certainly not later than the next year (1818) a trading house was established at the mouth of the Verdigris. From the meager data at hand it cannot be determined just when or by whom this trading post was started. The earliest reference to it thus far met with is in Nuttall's "Journey."[1] When Nuttall was in Cincinnati on his way west, he met Colonel Hugh Glenn and received a letter of introduction to Colonel Glenn's clerk and interpreter, Charles Bogy.[2] In the fall of the next year (1820) Thomas Say, the zoölogist, who led a party of Long's men down the Arkansas (sect. 25), spoke of stopping at the trading house of Colonel Hugh Glenn. Auguste Pierre Chouteau (p. 14, note), who had charge of the Arkansas branch of the Chouteaus fur business, was a prisoner in New Mexico in 1817–1818, and this must have given Colonel Glenn his opportunity to engage in trade with the Osages. Chittenden, in his "History of the American Fur Trade in the Far West" (New York, 1895), says that Colonel Glenn's establishment was a temporary post and was abandoned after the commencement of the Santa Fe expedition, in which Glenn joined Fowler (sect. 31). As soon as Colonel Chouteau was released by the Spanish he returned to the Verdigris and took possession of this post. Jacob Fowler gives us no reason why Colonel Glenn should have abandoned his establishment as he did in 1821, but it was probably because of the return of Chouteau.[3]

[1] Nuttall, Thomas, A Journey of Travel into Arkansas Territory during the Year 1819 (Philadelphia, 1821); represented in Thwaites, R. G., Early Western Travels, Vol. XIII, p. 260.

[2] Nuttall spells it "Bougie." Mr. Bogy was the grandfather of Louis V. Bogy, United States senator from Missouri (1873–1877). There was also at the trading house one Nathaniel Pryor, who had been with Lewis and Clark.

[3] Coues, Elliott, The Journal of Jacob Fowler (New York, 1898), pp. 3–4. "We stopped at the trading house of Colonel Hugh Glenn, about a mile

22. Thomas Nuttall's Journey. Thomas Nuttall, a Harvard professor, has left us a most interesting account of his sojourn in Oklahoma in the spring of 1819. He arrived at Belle Point (Fort Smith) two years after its establishment. At first he was not allowed to proceed, for the government had just determined upon the policy of reserving the region west of Fort Smith exclusively for Indians. The treaty locating the western Cherokees on the White River in Arkansas had been made July 8, 1817.[1] The Osages claimed all this region at that time, but apparently without treaty authority, for the federal government held that the Osage country was the region south of the Arkansas and west of the Kiamitia and Poteau. In this country whites were no longer to be allowed to trespass. "This morning," writes Nuttall in his diary, under date of May 16, 1819, "I left Fort Smith with major Bradford[2] and a company of soldiers, in order to proceed across the wilderness, to the confluence of the Kiamesha [Kiamitia] with Red river. The object of the major was to execute the order of the government, by removing all the resident whites out of the territory of the Osages; the Kiamesha river being now chosen as the line of demarcation."[3] We are then given a most interesting account of the first considerable white settlement

up the Verdigris, where we remained till the 25th of September making arrangements for our journey to the mountains. . . . We found ourselves twenty men in all, under the command of Colonel Hugh Glenn." It is quite possible that Glenn knew Jacob Fowler previous to the latter's arrival on the Verdigris. Glenn was a Cincinnati merchant, and Fowler hailed from Covington, Kentucky, just across the Ohio River. In the Cincinnati City Directory for 1819 occurs the firm name of James & Hugh Glenn.

[1] Eighteenth Report of the Bureau of Ethnology (Washington, 1899), Part II, p. 685.

[2] This was Major William Bradford, then commandant at Fort Smith.

[3] Nuttall, pp. 206–207.

in Oklahoma. He tells us of a Mr. Styles, who, driven out of the Cherokee country in Arkansas, had but recently crossed the divide between the Poteau and the Kiamitia, with a wagon that included in its load women and children and a blind old grandmother ninety years of age. Some twenty families had already taken up their residence at the mouth of the Kiamitia, and twelve at Pecan Point, a few miles further down Red River. "The people appeared but ill prepared for the official intelligence of their ejectment. Some who had cleared considerable farms were thus unexpectedly thrust out into the inhospitable wilderness."[1] These settlers had been there long enough to raise a wheat crop. Nuttall naïvely remarks that "some settlers had the conscience to charge three dollars and a half per bushel for it because of the scarcity of last year."[2] We can reasonably conclude from this that some of these families had settled there as early as 1817, when Fort Smith was established. Had the government not interfered, the first white settlement in the state would no doubt have been here in Choctaw County. Nuttall gives to these settlers a "hard" reputation, saying that they were for the most part "renegadoes from justice and such as had forfeited the esteem of society," although the families he stopped with while there seemed to deserve no such name.

23. Salt Works on Grand River. Nuttall, being a botanist, loitered behind looking for flowers, and the soldiers returned to Fort Smith without him. With considerable difficulty he finally made his way back to the fort, accompanied by settlers who were looking for some Cherokees accused of having stolen their horses. The scientist now went up the Arkansas

[1] Nuttall, pp. 213–214. [2] Ibid., p. 221.

River to the trading post previously mentioned (sect. 21). From there he proceeded to some abandoned salt works in what is now Mayes County, on the Grand, or Six Bulls, River, about twenty-five miles from the trading house. His diary under date of July 18, 1819, reads as follows: "Arrived at Mr. Slovers, two miles below Saline. The farm which this hunter occupied was finely elevated and productive, and apparently well suited to the production of small grain." [1] Mr. Slover went with Nuttall to the salt works. Shortly before a Mr. Campbell, one of the owners of the establishment, had been murdered by his partner, Erhart, and two employees. Evidently these salt works, which had been established by permission of the Indians, had existed for some time, but we are unable to determine when they were opened up. In September of the next year (1820) Say, the naturalist, when at the trading house, heard of the abandoned works and also learned that the apparatus had been removed.

24. Salt Works on the Illinois. Under date of September 6, 1820, Say, one of Long's men who led a party down the Arkansas in 1820 (sect. 25), makes the first mention we find of other salt works southeast from the Verdigris trading house. "In the evening, we arrived at Mr. Bean's salt works. These are situated on a small creek, which flows into the Illinois creek about a mile below, and are at the distance of about seven miles from the Arkansas. Mr. Bean commenced his operations in the spring, and had already a neat farm-house on the Illinois, with a considerable stock of cattle, hogs, and poultry, and seven acres in Indian corn. Near the spring he had erected a neat log-house, and a shed for the furnace; but his kettles, which were purchased of the proprietors

[1] Nuttall, p. 242.

of the Neosho [Grand River] establishment, were not yet fixed."[1] The next year Jacob Fowler spent the night of September 7, 1821, at these same salt works of Mr. Bean.[2]

[1] Say's Diary, given in "Long's Journey," Thwaites's Early Western Travels, Part III, p. 286. He also gives an interesting account of the first tarantula he ever saw. "While waiting with a moderate share of patience for our evening meal of boiled pumpkins, one of the children brought us a huge, hairy spider, which he carried upon a twig."

[2] Coues, The Journal of Jacob Fowler, p. 2. Fowler was not a very successful speller. This is the entry in his journal: "Stopped for the night at Beens Salt Workes — the [y] the Workes one Small Well With a few kittles about 55 gallons of Watter makes a bushil of Salt and the Well affords Watter to boil the kittles about three days in the Weake. Been and Sanders Has permission of the govem [government] to Worke the Salt Spring — the Sell the Salt at one dollar per. Bushil."

CHAPTER IV

CENTRAL AND SOUTHERN OKLAHOMA EXPLORED

25. Long explores the South Canadian. In 1819 and 1820 Major S. H. Long made an extended expedition in the great West. He led his party to the Rocky Mountains by way of the Platte valley in Nebraska, intending to explore the Red River on his return. In May, 1806, Captain Richard Sparks had attempted the exploration of the Red River valley, but he met many difficulties when going up the river, and finally encountered a force of Spanish troops, which compelled him to return. Texas was then Spanish territory, and the boundary between Louisiana and the Spanish domain had not been determined. Thus Long attempted to accomplish by coming from the west what Sparks had failed to do by going up the stream. Pike, we have seen, mistook the Rio Grande for Red River. Long's experience was similar, only he supposed the Canadian[1] to be the Red River. During the long, hot summer of 1820 he wearily followed the windings of this stream, only to learn that he was upon the Canadian River, and had mapped that, instead of the long-sought-for Red River of Louisiana. In 1839 Josiah Gregg, a Santa Fe trader, took a wagon train from Van Buren, Arkansas, across the entire

[1] Canadian is not a French but a Spanish word. It was called Rio Cañada, or Rio Cañadiano, then Rio Cañadian, whence came the present word *Canadian*. It evidently means "cañon" and refers "to the way in which the stream is boxed up, or shut in, by precipitous walls near the headwaters."— Coues, Expedition of Zebulon Montgomery Pike, Vol. II, p. 558.

length of Oklahoma, keeping on the north side of the south Canadian. The next year he returned by almost the same route. Gregg has left us a most interesting account of his trip.[1]

26. Red River Explored. Long's failure was the third unsuccessful effort to explore Red River. It was left for Captain Randolph B. Marcy, an officer who has written most interestingly of his western explorations, finally to explore the Red River valley. This was not done until 1852, almost a generation after the Civilized Tribes had settled in this region. Captain Marcy was accompanied on the expedition by Lieutenant George B. McClellan, the famous General McClellan of the Civil War. He began his march from Fort Belknap, on the Brazos River in Texas, May 1, 1852. "On the 9th we reached the mouth of Cache creek (Comanche county), the point at which we were ordered to commence our examinations. This point was at that time about two hundred miles, by the meanderings of the river, above the remotest white settlements where steamboats had yet reached."[2] Marcy first followed Red River to a point near the mouth of the North Fork, and then the course of the latter stream beyond the 100th meridian. Captain McClellan located this meridian with considerable care,[3] since it was the boundary line between the Chickasaw nation and Texas. The fact that Marcy turned to the north, instead of following the main channel of Red

[1] See Gregg's "Commerce of the Prairies," Thwaites, Early Western Travels, Vol. XX, Chaps. XVII, XXIV.

[2] Marcy, Colonel R. B., Thirty Years of Army Life on the Border (New York, 1866), p. 119. See also Marcy, Randolph B., assisted by McClellan, George B., Explorations of the Red River of Louisiana (Washington, 1854).

[3] Marcy, Explorations of the Red River (this under date of May 30, 1852).

River, was one of the proofs later put forth by Texas to show that the North Fork was really the main channel of Red River, and that therefore Greer County was a portion of Texas and not a public domain. The expedition returned to Fort Arbuckle by way of the Wichita Mountains (see map, p. 3).

27. Other Expeditions. When Captain Marcy had completed his survey of Red River, all Oklahoma had been thoroughly explored and mapped. The explorations enumerated above are the ones of most importance to the student of Oklahoma history. Early in the thirties exploring parties and military expeditions became numerous, and while there was little to add to the geographical knowledge of the state, yet the records of these parties are of no small historical value in following the gradual, but permanent, conquest of the state for civilization.

28. Washington Irving's Tour of the Prairies. In October, 1832, Washington Irving, accompanied by a troop of mounted rangers, penetrated the center of the state. Charles Joseph Latrobe, an English writer of travel, was one of the party. According to his account, the object of the expedition was to explore the region a hundred miles west of the Neosho to the Grand (South) Canadian, to find whether it was a suitable one in which to settle Indians about to be moved from the eastern states.[1] He reports that it was decided not to be a favorable spot for this purpose. "The object of the expedition, . . . had been in one respect accomplished, in that the character of the country between the two great rivers had been ascertained, and

[1] Latrobe, Charles Joseph, The Rambler in North America, 1832–1833 (London, 1835), Vol. I, p. 179. See also Irving, Washington, A Tour of the Prairies (New York, 1897), for a most interesting account of this sojourn in Oklahoma. For the object of the expedition, see Irving's Tours (Chap. VIII); and Latrobe, Vol. I, p. 247.

found to be such as to preclude all idea of settling the eastern Indians upon it. . . . With the exception of the rich alluvial lands of the Arkansas, and a few strips of like character along the tributary streams, the whole district we had passed over was in fact a desert." Some such report the Indian commissioner, William W. Ellsworth, who was with the party, evidently made — and this of such counties as Payne, Logan, Oklahoma, Cleveland, Pottawatomie, and Lincoln, through all of which he must have passed at that time!

29. George Catlin in Oklahoma. At the time that Irving was on the prairies, or soon after, the Kiowas and Osages quarreled and took to the warpath. To quiet this disturbance, as well as to make a demonstration against all the Plains Indians who dwelt in southwest Oklahoma, a large expedition was fitted out under General Henry Leavenworth shortly after Irving's return. It happened that George Catlin, a talented artist, chanced to be in the Indian country at this time and accompanied the troops to the Wichita Mountains. Catlin, who was also a famous lecturer and writer, gave many years of his life to the painting of Indian types and frontier scenes. The steel engravings made from his paintings, and the book [1] written to accompany them, give us most accurate details concerning this expedition. General Leavenworth,[2] on his arrival at Fort Gibson, superseded Colonel Arbuckle in command. At the head of a regiment of dragoons and the Seventh United States Infantry, and accompanied by a large detachment of Indian scouts and frontiersmen who marshaled the pack train, he proceeded by way of Fort Towson to the mouth

[1] Catlin, George, Letters and Notes on the Manners, Customs, and Conditions of the North American Indians (Philadelphia, 1857).

[2] Fort Leavenworth, Kansas, founded in 1827, was named for General Leavenworth.

of the "False" Washita.[1] Soon after leaving the permanent camp established there he was seriously injured by a fall from his horse, received when chasing a buffalo calf. He returned to camp, where he died July 21, 1834. Many soldiers fell sick with fever, and were left on the Washita with the dying general.

30. Treaty with Plains Indians. However, the expedition was continued in charge of Colonel Henry Dodge, second in command, and the Indian commissioner, Montfort Stokes. The troops visited a large Comanche village close to the Wichita Mountains and evidently not far south of the present site of Anadarko. From this point the command marched southwest through the Wichita Mountains to the village of the Pawnee Picts, or Wichitas, on Red River. These Indians lived, then as now, in large dome-shaped grass houses similar to those described by Coronado (see p. 4). General Stokes presided at a council held in the vicinity of the west slopes of the Wichita Mountains, and attended by three of the principal chiefs of the Pawnee Picts, fifteen Kiowas,[2] one Comanche, and one Waco. Seven Comanche chiefs came part way to the council, but turned back, afraid that the soldiers would do them injury. Catlin has left us a most interesting account of this council, and his pictures give us an accurate idea of these truly indigenous Oklahomans, at the time of their first knowledge

[1] The Pawnee Picts, now known as the Wichitas, previous to the coming of the army had murdered one Judge Martin and his entire family, with the exception of one son, when encamped at the mouth of this stream. The Pawnee Picts were a small tribe of most energetic and vindictive prairie rovers. They were Texas and southwest Oklahoma Indians, no kin to the Pawnees of the Platte. Catlin was present when the Pawnees were compelled to give up this Martin boy. See Catlin, p. 503.

[2] Catlin spells it "Kioways." See his account of the council, p. 521.

of the armed forces of the United States. The expedition returned directly to Fort Gibson, undergoing much suffering on account of lack of food and water. Virulent fevers still prevailed, and Catlin himself was barely nursed back to life on his arrival at the fort.

31. The Missions. No discussion of the early expeditions of the white people into Oklahoma would be complete without mention of the coming of the missionaries. These men, moved by their high calling, kept pace with the fur traders and the hunters in their invasion of the wilderness. Long before the Cherokees were domiciled in Oklahoma, and but two years after Fort Smith was established, missionaries were on their way to this region. "I remained at the [Fort Smith] garrison," writes Professor Nuttall, "until the 16th of October (1819). . . . Among my associates in affliction were numbered two missionaries, who had intended to proceed to the Osages. One of them (Mr. Viner), after the attack of a lingering fever, paid the debt of nature."[1] In spite of his illness the Reverend Mr. Chapman, Mr. Vinall's companion, persisted in the enterprise, and in November, 1819, secured permission from the Osages to locate a mission among them, and on February 18, 1820, Union Mission was actually established. Thus this Reverend Mr. Chapman was the first Oklahoma missionary. He was sent out by the United Missionary Society of New York,[2] an organization supported by members of the Reformed Dutch, Associate Reformed, and Presbyterian churches. A year later (1821) Jacob Fowler speaks of Colonel Glenn's visit to "the mishun" (sect. 21) just before leaving for the West.

[1] Thwaites's reprint of Nuttall's Journey, Vol. XIII, p. 279.

[2] Morse, Rev. Jedidiah, D.D., A Report to the Secretary of War of the United States on Indian Affairs (New Haven, 1822), p. 209.

The American Board of Missions began its work among the western Cherokees in Arkansas in 1820, at a place called Dwight, about one hundred miles below Fort Smith. Union Mission was located in August, 1821, on the Neosho, a few miles from the trading house on the Verdigris, and Harmony Mission, just over the Missouri line, was started the same year. It was not until April, 1824, that Fort Gibson was established near Union Mission, to serve as a barrier between the Osages and the oncoming Cherokees. Wars between the western Cherokees and the Osages (sect. 98), and the arrival of other Cherokees from the East, kept things in a turmoil, and the missions did not flourish as they otherwise would have. In 1828 the western Cherokees were moved to Oklahoma. The next year New Dwight was established on Salisan Creek near the Neosho, about fifty miles north of Fort Gibson.

Both Latrobe and Catlin bear testimony to the earnest piety and success of Reverend W. C. Requa, the most famous of early Oklahoma missionaries. He "was an early pioneer of Christianity in this country," Catlin tells us, "who has devoted many years of his life, with his interesting family, in endeavoring to civilize and Christianize these people, by the force of pious and industrious example, which he has successfully set them."[1] Latrobe also points out how this little village of the Osages was led to right living by being separated from the rest of the tribe. "But few of his Indians join the great spring and autumnal hunts, or the war parties of the tribe, and that is certain proof of success."[2] Of such feeble but earnest beginnings was the missionary work that eventually made the Indians of Oklahoma famous for their religious zeal.

[1] Catlin, Letters and Notes, p. 538.
[2] Latrobe, The Rambler in North America, Vol. I, p. 162.

CHAPTER V

WHY INDIANS WERE FIRST MOVED TO OKLAHOMA

32. Oklahoma unoccupied by Indians. No large Indian tribes occupied Oklahoma permanently for three centuries after it became known to white men. Like Kentucky, it was rather the hunting ground and game preserve for all the tribes which dwelt within a radius of a thousand miles of its well-stocked woods and prairies. Coronado, and all the explorers and travelers who come after him, describe wandering bands of Indians who followed the migrations of the buffalo through this region but seemed to have no permanent homes here. The Quivera (see map, p. 3) of Coronado was evidently north of the region that now constitutes Oklahoma. We have seen (sect. 17) that Wilkinson, in 1806, visited a single band of Osages, which dwelt upon the Verdigris in what is now Oklahoma. The Quapaws, whom De Soto found settled in Arkansas, claimed, with some right, this country as their own. But while both these tribes had long resided in the vicinity of Oklahoma, neither of them can be called indigenous to the state. The Wichitas, Kiowas, and Comanches can perhaps be more correctly termed Oklahoma Indians, for they must have wintered frequently in the southwest portion of the state near the Wichita Mountains; but it seems incongruous to call such wanderers as were these tribesmen permanent inhabitants of any place.

33. Early Americans believed in establishing an Indian State. It was not until the Five Civilized Tribes began to be

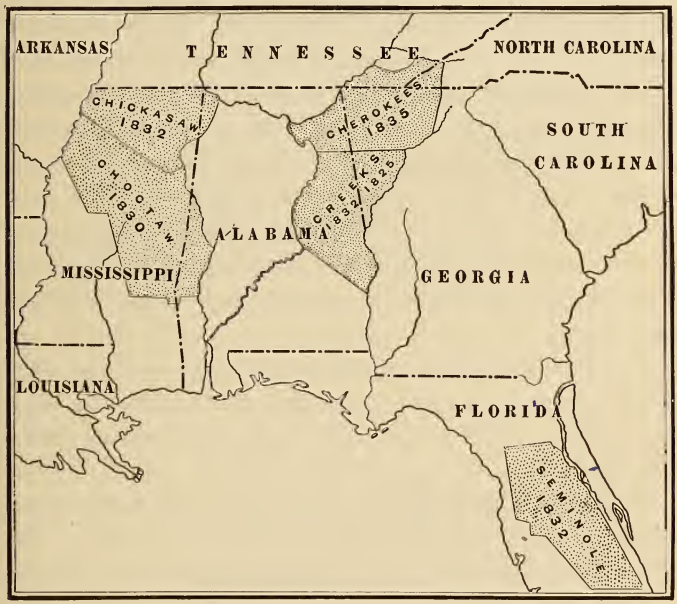
moved west of the Mississippi that the region now comprising the state of Oklahoma had any considerable Indian population, or was regarded as the proper location for the Indian state, long dreamed of by those kindly disposed toward the American aborigines. The first treaty made by the government of the United States with an Indian tribe suggested the establishment of such an Indian state. In the last article of the treaty of 1778 with the Delawares, it was set forth that if it should be found to be to the "interest of both parties," other tribes might join the Indian confederation and "form a state" with representation in Congress.[1] This treaty, signed at Fort Pitt, September 17, 1778, is the first suggestion I have found that looked to the setting apart of a section of the United States to be given over entirely to Indians. But this idea of an Indian empire was soon forgotten until other events revived it.

34. Effort to induce Indians to become Farmers. Washington was much interested in the civilization of the aborigines of the country, and in a treaty which he himself made with the Cherokee Indians in 1791, during his first term as President, he says: "In order that the Cherokee Nation may be led to a greater degree of civilization, and to become herdsmen and cultivators, instead of remaining in a state of hunters, the United States will from time to time furnish gratuitously the said Nation with useful implements of husbandry."[2] While this policy of turning the Indians into farmers did not succeed well with most of the tribes, yet those nations located in the southeastern portion of the United

[1] Senate Document No. 452, "Indian Affairs: Laws and Treaties," Vol. II, p. 3.

[2] Senate Document No. 452, p. 25.

States progressed far too well to please the whites of that locality. These southeastern Indians were more civilized than any of the other native tribes of America north of Mexico. As they advanced in civilization, the prospect of their being



Map of Eastern Reservations of Five Civilized Tribes

willing to move became less, and the states clamored the more for their removal.

35. Why the States objected to Independent Indian Nations within their Borders. The reasons why the states objected to the presence of the Indians are not difficult to explain. In the first place, the Indians held much land that they did not use, although their holdings had been cut down from time to

time by treaties. The Anglo-Saxon settlers, proverbially land-hungry, were incensed that the Indians should be left in possession of vast tracts of land which apparently they would never put to any use. In the second place, the Five Civilized Tribes finally organized fairly efficient governments, much like the governments of the states. The Indian polities insisted on being recognized as independent nations, and under shrewd leadership treated directly with the national government, ignoring the states in which they were located. It is a sound principle of government that there cannot be a state within a state. There were bound, therefore, to be countless differences between the citizens of the two regions. It seemed wholly unreasonable to Georgia and her neighboring states that they must have an extended frontier, to be watched and guarded.

In the third place, it would naturally be a fruitful source of difficulty to have races so opposite as the white and Indian living close together, especially when their interests seemed to conflict.

36. Jefferson promises Georgia to extinguish Indian Titles. In 1802 Georgia ceded her western lands to the United States. In the treaty of cession it was stipulated "that the latter would extinguish the Indian titles to the lands within her remaining limits 'as soon as it could be done peaceably and on reasonable terms.'"[1] But at the same time that President Jefferson made this agreement with the state of Georgia, he was negotiating treaties with the Indians, encouraging them to take up agricultural pursuits, to settle down, and cease to be rovers.

[1] William Wirt, quoted in Niles's Register, Vol. XXXIX (June 20, 1830), p. 88. Here we find a long and most able argument setting forth the Cherokees's right to their Georgia lands.

Thus materially assisting the Indians, he made it much harder to induce them to move.

37. Cherokee Nation Divides. However, by a series of treaties the United States did succeed in turning over to Georgia and other southeastern states a considerable portion of the Indian lands. Between the years 1809 and 1817 probably six thousand Cherokees moved to the west of the Mississippi River,[1] but it was only the more restless hunter members of this tribe who went. Wilkinson, as early as 1806, noticed scattered villages or camps of Choctaws, Creeks, and Cherokees along the Arkansas. In this way the Cherokee nation became and still remains divided.[2]

38. Location of Cherokees in Oklahoma. The settlers in Arkansas Territory objected to having the Indians retain large tracts of fertile land, as vigorously as had the citizens of Georgia. So in 1828 the western Cherokees who had resided on the White and Arkansas rivers in Arkansas were again compelled to move on. The Indians were guaranteed seven million acres of land in the northeastern corner of what is now the state of Oklahoma; they were also to have "a perpetual outlet west as far as the sovereignty and right of soil of the United States extended."

39. Cherokee Outlet. Here we have the first mention of the famous "Cherokee Outlet." It was supposed that if the

[1] Extra Census Bulletin, "The Five Civilized Tribes" (Washington, 1894), p. 24.

[2] Most of the Cherokees remaining in the East lived on a reservation in the extreme western part of North Carolina. A few isolated families still reside in Georgia and East Tennessee. Until the tribal rolls were closed in the Indian Territory, the tribe was regarded as a unit, and the eastern Cherokees were free to join the main body of the tribe. They were permitted to allot land and shared in the tribal funds, exactly upon the same footing as those who had lived west of the Mississippi for three quarters of a century.

Indians owned the land westward as far as the United States dominion extended, all future difficulties would be avoided. Spain at this time owned Texas and the region north to the Arkansas River (sect. 14), and therefore the "Outlet," or Cherokee strip, extended only to the 100th meridian of west longitude. It was also stipulated by the United States Senate that the northern boundary of this "Western Outlet" should not extend north of 36°, nor should the Cherokee territory include any lands previously assigned the Creeks (sect. 48). This presented another difficulty. The Cherokee country was found to overlap Creek lands. We shall see that the Creeks made treaties in 1825, and again in 1826, which looked to their eventual removal to the west of the Mississippi. Therefore in 1833, by a treaty made at Fort Gibson, the Cherokee territory was moved a half degree north, or to 37°, and the northern boundary of the "Outlet" was not limited to a given parallel as before, but was to be the land extending west from the Cherokee nation. The fact that the Cherokee lands overlapped those of the Creeks, and that the government was compelled to give to the former lands farther north, explains why the northern boundary of Oklahoma did not remain on the old Missouri Compromise line of 36° 30′, as was the case when Oklahoma was a part of Arkansas Territory (see map, p. 35). In 1837 this "Outlet" was surveyed under the direction of the Reverend Isaac McCoy, an Indian missionary long active in moving Indian tribes west of the Mississippi.

40. The Eastern Cherokees. The eastern Cherokees were still more than twice as numerous as the band that had settled in the West. In the treaty of 1828, when the western Cherokees were persuaded to move out of Arkansas into what was

Oklahoma when a Portion of Arkansas Territory, showing North Boundary at 36° 30′ instead of 37° as now

thereafter called the Indian Territory, special inducements were held out to eastern Cherokees to move west also. Besides just compensation for the property which each Indian might abandon, he was to be given a rifle, blanket, kettle, five pounds of tobacco, and his expenses of emigration. But this munificent offer "of shooting iron, kettle, and five pounds of tobacco" in no way had the desired effect. Nineteen thousand Cherokees still remained in the East. Years of contact with the whites, coupled with peculiar aptitude, had civilized the Cherokees sufficiently to make them realize the value of their lands. It had also trained them in the white man's ways of resisting aggressions, and had given them a leader of extraordinary capacity in the person of John Ross.

41. John Ross. The biography of John Ross (Ko-o-wes-ko-o-we), from the time he first entered public life in the Cherokee nation in Georgia to his death, fifty-five years later, would make a comprehensive history of the Cherokees. Ross was born October 3, 1790, in the Cherokee country in Georgia. He was one of nine children of the Scotchman, Daniel Ross, and his Cherokee wife. Young Ross received a good English education at Kingston in Tennessee. His state papers bear comparison with those of many of the Presidents of this country. At nineteen he began his public career as an emissary to the western Cherokees. In 1817 he became a member of the Cherokee national council, in which he served continuously for ten years, being made president of that body in 1826. He was president of the first Cherokee constitutional convention, and became assistant chief of the eastern Cherokees in 1827 and was made principal chief the next year. In 1839 he became governor, or principal chief, of the united tribe in Indian Territory, and held this office until his death at

Washington, August 1, 1866. Although at times a dictatorial and imperious ruler, yet during the thirty-eight years that he was principal chief of the Cherokee nation he was always found on the side of the missionaries, favoring right living, law, and order, as opposed to the demoralizing influences of the frontier. He always counseled peace and moderation, and his conciliatory attitude no doubt restrained the Cherokees from many a suicidal foray and Indian war.

CHAPTER VI

CREEKS AND CHEROKEES COMPELLED TO LEAVE GEORGIA

42. Creeks forced out of Georgia. Georgia made her first attack upon the Creeks instead of on the Cherokees, for they offered less resistance. A glance at the map (p. 31) makes clear the locations of the Cherokees and Creeks in that state. The Cherokees held the northwestern corner of the state, and the Creeks were in possession of a triangular piece of land south of the Cherokees. Georgia was much dissatisfied with the way the federal government had kept its agreement of 1802 to "extinguish the Indian titles to the lands" within her borders. As the Indians ceased to be hunters and turned farmers, they became attached to the soil. They prospered, many of them building comfortable homes and developing large tracts of land. They had begun to intermarry with the whites, and every drop of white blood in their veins rebelled, upon the ground of self-interest, against being forced from their homes. Moreover, this was the ancient home of both the Creeks and Cherokees, for here De Soto had found them in 1540, and the full-blood Indians were even more set against removal than the white men who had come among them.

43. Chief William McIntosh betrays the Creeks. In 1823 George M. Troup, an earnest and able advocate of state sovereignty, became governor of Georgia. He felt that it was a gross infringement upon the rights of the state to have independent Indian governments within the limits of Georgia. He proposed to break up these governments, notwithstanding

their treaty rights with the United States. In 1825 a commission was appointed by President John Quincy Adams to treat with the Creeks for their Georgia lands. These commissioners [1] were both Georgians and naturally were extremely zealous in this matter. Early in March, 1825, a council of the Creeks was called by the commissioners to meet at Indian Springs, which was situated in the Georgia portion of the Creek nation. Indian Springs was on the personal estate of General William McIntosh, chief of the Coweta band of Creeks, who was active in advocating the sale of these lands, although the tribe was practically a unit against it. For a long time previous to this, McIntosh had been out of harmony with the majority of the tribe. At the battle of Horseshoe Bend (March 27, 1814) he and his followers even fought against their own people. General Jackson, in his report of the battle, commends McIntosh for the able assistance rendered him.[2] But this desertion of his own people seems to have been forgotten by them, for at the treaty of Indian Springs in 1821, when the Creeks surrendered an extensive strip of territory, McIntosh played a prominent part, but not in the interest of his people. It is hardly to be doubted that he was bribed at that time, for in 1823 we find him suggesting to John Ross,[3] president of the national council of the Creeks, that by ceding more lands the Creeks could obtain a large bribe. The letter is so typically Indian that I give it here in full.

[1] Their names were Duncan G. Campbell and James Merriweather.

[2] The report reads thus: "Major M'Intosh, the Coweta, who joined my army with a part of his tribe, greatly distinguished himself." — Drake, S. G., Aboriginal Races of North America (revised by H. L. Williams, New York), p. 391.

[3] So far as I know, this Ross was no relative of the able Cherokee chief, John Ross.

Newton, 21st October, 1823

My Friend,

I am going to inform you a few lines, as a friend. I want you to give me your opinion about the treaty; whether the chiefs will be willing or not. If the chiefs feel disposed to let the United States have the land, part of it, I want you to let me know; I will make the U. States commissioners give you 2000 dollars, A. M'Coy the same, and Charles Hicks 3000 dollars, for present, and nobody shall know it; and if you think the land woulden sold, I will be satisfied. If the land should be sold, I will get you the amount before the treaty sign, and if you get any friend you want him to receive, they shall receive. Nothing more to inform you at present.

I remain your affectionate friend,

Wm. McIntosh

John Ross

An answer return

N. B. The whole amount is $12,000. You can divide among your friends, exclusive $7000.[1]

It would seem from the postscript that the frugal McIntosh aimed to retain five thousand dollars for his own profit in the deal. But McIntosh made a mistake in writing to Ross. Three days after the letter was written a Creek council was called (October 24, 1823), at which the letter was read and McIntosh exposed.

44. Treaty of Indian Springs. In 1825 we find General McIntosh again at Indian Springs, the chief advocate of doing just what Georgia and the whites wanted done. An old chief arose and announced the policy of the tribe:

We have met you here at a very short notice, and do not think that the chiefs who are here have any authority to treat. General McIntosh knows that we are bound by our laws, and what is not done in the public square, in the general council, is not binding on the Nation. I am, therefore, under the necessity of repeating the same answer as given at Broken Arrow. We have no lands to sell. I know that there are but few here from the upper towns, and many are absent from the lower

[1] Quoted in Drake's Aboriginal Races, pp. 392–393.

towns. General McIntosh knows that no part of the land can be sold without a full council, and with the consent of all the nation, and if a part of the nation choose to leave the country they cannot sell the land they leave, but it belongs to the nation. This is the only talk I have for you. I shall return home immediately.[1]

Here we have an apt expression of the Indian's case. The tribe held the lands in common, and only the tribe could dispose of them. But notwithstanding the departure of some of the chiefs and the small attendance at this council, the commissioners proceeded to make a treaty with McIntosh. These commissioners immediately wrote Governor Troup: "We are happy to inform you that 'the long agony is over,' and that we concluded a treaty, yesterday, *with what we consider the nation*, for nearly the whole country."[2] The matter was afterwards investigated by General Gaines, a federal official, and it was found that but two Indians, who in any way had legal right so to do, signed the treaty.[3]

45. Georgia seizes the Creek Lands. Georgia assumed that the treaty was in every way legal, and immediately began to take possession of the Creek lands. Nothing was finer than Creek and Cherokee fortitude in these days of their persecution. Instead of striking back and launching forth upon bloody forays, and thus giving the whites an excuse for the complete annihilation of the tribes, they evinced a degree of moderation and self-restraint hard to reconcile with the typical idea of Indian character. I have failed to find a single instance where the Indians in either the Creek or Cherokee

[1] Drake, Aboriginal Races, p. 292. The speaker was the chief of the To-kaw-bat-chees, and in the treaty which McIntosh persisted in making, this clan is expressly excepted. See Senate Document No. 452, "Indian Affairs: Laws and Treaties," Vol. II, p. 151.

[2] Niles's Register, Vol. XXVIII, p. 18.

[3] Ibid., Vol. XXX, p. 256.

tribes, although so grievously wronged, resorted to arms. While the treason of McIntosh and his fellow conspirators met with speedy and drastic punishment, yet the intruding whites who swarmed in upon the Indian lands were never attacked or molested.

46. Assassination of McIntosh and his Co-conspirators. The Creeks immediately called a council to see what steps should be taken to save their dominion in Georgia. The death of General McIntosh was immediately decreed in accordance with Creek law. On Sunday, May 1, 1825, his house was surrounded by one hundred Okfuskee warriors. The women, children, and white men in the house were told to come out. Chilly McIntosh, eldest son of the doomed chief, who later played an important part in Oklahoma history, was allowed to retire unharmed. Then the house was set on fire. When McIntosh and E-to-me,[1] the only other chief who had signed the hated treaty, attempted to escape, they were shot down. The same day Samuel Hawkins, a half-breed, was hanged, and the next day Benjaman Hawkins, another half-breed, was wounded but not killed. These two men were brothers of one of the wives of McIntosh, and had consented to the treaty. These "executions" were immediately heralded by the Georgia press as Indian outrages. But Colonel John Crowell, the Creek Indian agent, reported that all whites were safe in the Creek country and that the McIntosh matter was merely "an affair of their own."[2]

47. Creeks make New Treaty at Washington. It is impossible to follow all the details of the quarrel Georgia now

[1] This chief's full name was E-to-me Tus-tung-nug-gee. He, too, was a Coweta Creek.

[2] Niles's Register, Vol. XXVIII, p. 197.

forced upon the Creeks. The state assumed that everything done by McIntosh was valid and binding upon the Indians. Investigations ordered by President Adams resulted in the administration's decision that this was not the case, and properly authorized Creek chiefs were induced to come to Washington the next year to ratify a new treaty for the Georgia lands, which the tribe had virtually lost through the treachery of McIntosh. The new treaty made at Washington, January 24, 1826, put into effect all the important provisions of the treaty of the previous year, although the Indian Springs, or McIntosh, treaty was expressly declared null and void. The new treaty demanded the surrender of all the Creek lands in Georgia; but a large sum was paid the Creek chiefs for them, and a perpetual annuity of twenty thousand dollars was to be paid the tribe. Most of the two hundred and seventeen thousand six hundred dollars that was paid the Creeks at the time the treaty was made was immediately pocketed by the chiefs who were in attendance at Washington. Major Ridge, a Cherokee of whom we shall hear often, chanced to be present and was given ten thousand dollars by the generous and open-handed Creeks. Twenty-two chiefs thus divided one hundred and fifty-nine thousand seven hundred dollars among themselves.[1]

48. McIntosh removes to Oklahoma. Most of the Creeks when compelled to leave Georgia merely removed across the state line into Alabama, where the tribe still had large holdings. But the dispute between the Coweta band of Creeks and the rest of the tribe became so bitter that a large number of the followers of McIntosh, under the leadership of his son Chilly McIntosh, removed directly from Georgia to

[1] Ibid., Vol. XXX, pp. 257–258.

Oklahoma. Here they were settled upon a reservation that had been set aside for the Creeks in October, 1820.

49. Forced Removal of the Cherokees. Georgia's eminent success in driving the Creeks out of that state led its governor immediately to turn his attention to the Cherokees. Try as he would to bring it about, this tribe would make no treaty and evinced no disposition to move. It still held 5,292,160 acres of land in the northwestern corner of Georgia, to say nothing of holdings in Alabama, Tennessee, and North Carolina. December 19, 1829, Georgia annexed the Cherokee lands to five adjacent counties and declared that after June 1, 1830, all laws of the Cherokee nation would be null and void, and that all Indians resident in the Cherokee country would be subject to the laws of the state. In July, 1829, gold was discovered in the Cherokee country in Georgia. This gave a powerful stimulus to dispossess the Indians. By the summer of 1830 some three thousand persons were searching for gold in northwestern Georgia, where the United States, Georgia, and the Cherokee nation all claimed jurisdiction.[1]

50. President Jackson refused to aid the Cherokees. President Adams sought to prevent this palpable violation of Cherokee treaty rights. But March 4, 1829, Andrew Jackson became President. He reiterated again and again, as this Cherokee imbroglio developed the proportions of a national issue, that the President had no constitutional right "to apply military force to the removal of persons from any part of the Indian country over which the laws of the proper state have been extended."[2] This decision of the President made it

[1] MacDonald, Wm., in American Nation Series, Jacksonian Democracy, 1829–1837 (New York and London, 1906), p. 173.

[2] Letter to John Ross from Albert Herring, commissioner of Indian affairs, Niles's Register, Vol. XLIV, p. 14.

easy for any state to invade the territory of the Indian nations, although successive treaties expressly stipulated that the United States solemnly guaranteed to the Indians "all their lands." And while this policy of President Jackson seems hard, and in direct conflict with treaty obligations, yet it must be admitted that if the United States was to become a great homogeneous nation, it could not nurture independent nations within its borders.

51. Missionaries imprisoned who refused to submit to State Law. In December, 1830, Georgia passed an act forbidding any white person, except an agent of the United States government, to reside within the former Cherokee reservation without a license from the state. The Reverend Samuel A. Worcester, a Presbyterian missionary, and Dr. Butler, another missionary, were arrested and sent to the penitentiary for four years under this act. A writ of *habeas corpus* was served, and Chief Justice Marshall, of the United States Supreme Court, ordered Worcester discharged.

52. Supreme Court Defied. Georgia refused to obey the order of the Supreme Court, and the President refused to assist in enforcing the court's decree. Jackson declared that "John Marshall had made his decision; now let him enforce it." In spite of this hostile attitude of the President, the Cherokees were much elated. There was feasting and dancing when the news of the Supreme Court decision reached them, for the decision, while freeing Worcester, also declared null and void the laws of Georgia invading Cherokee sovereignty. But Georgia paid no attention to the court's decree. It continued to make its laws effective in the Cherokee country, and a few months later we find John Ross, principal chief of the Cherokees, appointing Thursday,

July 19, 1832, a day of fasting and prayer for relief from Georgia's aggressions.[1]

53. President Jackson's Inconsistency. Nothing was of avail, however, and early in the next year (1833) we find the Cherokees in Washington willing to make a treaty of removal. General Lewis Cass, President Jackson's secretary of state, was in charge of the negotiations for the government. General Cass had everything arranged for a successful treaty with the Cherokees, when suddenly they broke off negotiations and returned home. This was March 2, 1833. On March 1 Congress had passed the Force Bill in answer to South Carolina's nullification proclamation. This bill gave the President authority to use military force to uphold the decisions of the federal courts. If President Jackson was given the express authority to enforce court decrees in regard to tariff matters, the Indians reasoned that he had the same authority in regard to other direct and palpable violations of express decisions of the highest court in the country. But the Cherokees little understood the character of Andrew Jackson. Consistency concerned him little. South Carolina had to submit in the tariff dispute, while Georgia proceeded to work her own sweet will upon the defenseless Cherokees. The missionaries Worcester and Butler, after languishing for over a year in the Georgia penitentiary, were finally pardoned by Governor Gilmer, on their express promise not to return to the Cherokee country without the necessary state license.[2]

It was a hopeless struggle for the Cherokees. Finally, early in 1835 (February 28), they concluded a treaty for the

[1] Niles's Register, Vol. XLI, p. 441. See also reference for above, p. 117.

[2] They actually served one year and five months of the four-year term for which they were imprisoned. The United States court ordered their release March 3, 1832, and they were held by Georgia until January 14, 1833.

removal of the tribe to the west of the Mississippi. The Cherokees had exaggerated ideas as to the value of their land, and because of the difference between the valuations of it by the white and Indian commissions, the Senate of the United States was to decide how much should be paid the Indians for their holdings. This sum was fixed at five million dollars, an amount that the Cherokees felt was entirely too small. Chief Ross and most of the tribe opposed the acceptance of the award and left the council.

54. Cherokee Treaty Party is Formed. Meanwhile, a "treaty party" had grown up under the leadership of Major and John Ridge, who were ably supported by Elias Boudinot. As early as August, 1832, this gifted young Indian tendered his resignation as editor of the Cherokee *Phœnix*. "I cannot tell them [the Cherokees]," he wrote to John Ross in his letter of resignation, "that we will be assisted in our rights when I have no such hope, and after our leading, active, and true friends in Congress and elsewhere have signified to us that they can do us no good."[1] Boudinot and the Ridges had at last been forced to the conclusion that it was useless to struggle longer. They advocated accepting the treaty with the Senate's award, but the treaty was not ratified and the matter hung fire all the year. For the Ridges, becoming alarmed, refused for a time to further the removal project.

55. Treaty of New Ec-ho-ta. The United States commissioners, General William Carroll and J. T. Schermerhorn, then called another council. This council met at New Ec-ho-ta, Georgia, on December 29, 1835. In the proclamation calling the meeting it was announced that the commissioners would be prepared to make a treaty with the Cherokee people

[1] Niles's Register, Vol. XLII, p. 47.

who should assemble there, and that they would conclude that those who did not come gave their assent and sanction to whatever should be transacted at this council.[1] The Cherokees were now doomed. The small minority favoring removal, headed by the Ridges, appeared at the appointed time. Just twenty Cherokee chiefs and headsmen were present, the great body of the tribe being as much opposed to removal as ever. Like McIntosh (sect. 46) of the Creek nation, with but a minority of the council present this handful transacted tribal business; and, like McIntosh, with their blood they paid for their transgression of tribal law. This council relinquished all the lands claimed or possessed by the tribe east of the Mississippi. It was thus that the Cherokees lost title to a district exceeding in area the states of Massachusetts, Connecticut, and Rhode Island.[2] Besides the five million dollars, the Indians were to receive an additional grant of land in the Indian Territory, but had to meet the expense of removal to their new home. In spite of the fact that only a mere handful of Cherokees was present at this final council at New Ec-ho-ta, and that the council was not legally summoned nor the treaty officially sanctioned by the Cherokee nation, the treaty was ratified by the United States Senate and the Indians had to move. The Cherokees protested bitterly, but in vain, and on May 26, 1836, the treaty of New Ec-ho-ta was officially proclaimed.

56. Cherokees still refused to Move. Still the Cherokees refused to abide by a treaty to which they had never consented, and many of them showed no disposition to move. Meanwhile, the state of Georgia started to survey and sell the

[1] See preamble to the treaty of New Ec-ho-ta, Senate Document No. 452.
[2] Jackson, Helen Hunt, A Century of Dishonor, p. 229.

Indian lands,[1] and thus to dispossess the Cherokees of their homes. It was rumored that the Indians were about to make resistance, and a large force of militia was sent into the region, but they remained quietly in their homes until General Winfield Scott[2] appeared with a force of two thousand regulars. This was in the spring of 1838. The Cherokees were then compelled to leave the lands of their fathers. Hunger, cold, and exposure left a trail of bleaching bones from Georgia to Tahlequah. General J. E. Wood, who assisted General Scott in this enterprise, tells us that "the whole scene . . . has been heartrending, and such a one as I would be glad to get rid of."

57. Assassination of Ridge. The bitterness engendered by the forced removal of the Cherokees was not to die out until long after the Civil War. The Ridge, or treaty, party, on arriving in Indian Territory undertook to control affairs and allied itself with the old settlers, that is, with those who had moved into the territory from Arkansas. But the antitreaty party, which comprised the greater part of the newcomers, was the larger, and John Ross was chosen principal chief of the joined but not united tribe. Bitter hostility existed between the two factions of the tribe. The western Cherokees, or "old settlers," and the Ridge, or treaty, party especially objected

[1] The land was divided among Georgia citizens by means of a lottery.

[2] "Cherokees," said General Scott, "the President of the United States has sent me with a powerful army to cause you, in obedience to the treaty of 1835, to join that part of your people who are already settled on the other side of the Mississippi. Unhappily the two years which were allowed for the purpose you have suffered to pass away without following, and without making any preparation to follow. The full moon of May is already on the wane, and before another shall have passed away every Cherokee, man, woman, and child, must be in motion to join their brethren in the west." — Jackson, Helen Hunt, Century of Dishonor, p. 281.

to having the Ross faction seize all the tribal offices. Neither side showed a willingness to compromise. A convention was called June 20, 1839, at Tus-ka-to-kah to adjust the difficulties. The Ross faction determined to retain its power and the Ridges resolved not to yield. The Ridge chiefs finally withdrew to their homes. Then, if we may accept Stand Watie's statement,[1] on the evening that this council was dissolved a secret conclave of the Ross leaders was held. Forty men were selected to "execute" those leaders of the Ridge party who had signed the hated treaty of New Ec-ho-ta. However true may be the assertion regarding the dark conclave, it is certain that on the following day Boudinot, who was a physician, was accosted by four Indians and asked to visit a near-by house and administer some medicine. With his usual promptness he complied, and had proceeded about half the way when he was suddenly assassinated. According to the account which I found, not satisfied with his death they cut his body to pieces in the most shocking manner. John Ridge was the next victim. His home was surrounded early Saturday morning, June 22, before he was up, and he was murdered "in a manner too savage to relate." Major Ridge, the father, was absent on a visit to some friends in Van Buren, Arkansas. He was overtaken near the foot of the Boston Mountains and shot from his horse.[2]

John Ross was accused of instigating these assassinations, but he always disavowed any responsibility for the bloody deed,

[1] Congressional Documents, Vol. XXVI, quoted in Schoolcraft, H. R., History of the Indian Tribes of the United States (Philadelphia, 1857), p. 501.

[2] I have followed the accounts of Schoolcraft, pp. 501–506, and Drake, Aboriginal Races, pp. 460–461. Major Ridge was sixty-five years old at this time and his son thirty-seven. Colonel S. W. Bell and two or three others of the Ridge party also met a similar fate at this time.

and a knowledge of his high character leads us to accept his statement as true. For a time he was forced to surround his house with a guard of five hundred adherents. Several of the opposing chiefs fled to Fort Gibson. General Arbuckle offered Ross protection at the fort also, but he refused to leave his home. A general council of the Cherokees was held, attended only by the Ross faction, at which amnesty was granted to the murderers, and later some of the Ridge leaders were declared outlaws. However, in 1840 the Cherokees made compromises. Stand Watie and E. C. Boudinot, younger brothers of Elias Boudinot, always stood ready to head an insurrection among the Cherokees, but the administration of Ross was such that he held firm control until the confusion of the Civil War gave his quondam enemies their opportunity (sect. 110).

CHAPTER VII

ALABAMA, MISSISSIPPI, AND FLORIDA FOLLOW GEORGIA'S EXAMPLE

58. Removal of the Creeks from Alabama. We have seen (sect. 45) how the Creeks were forced to move from Georgia by the pseudo-McIntosh treaty of 1825 and that made at Washington the next year. We are now to see how Alabama got rid of her Indian nations. The clamor for the Muskogee lands in this state was just as persistent as in Georgia. The Creeks realized that they would have to yield, and in 1832 General Cass, that preëminent Indian negotiator of Indian treaties, induced them to agree to move.[1] "But there were important conditions attached. While ample provision was made for the removal of the Creeks . . . [yet] it was expressly provided that the Indians should not be compelled to go, but they should be free to go or stay as they pleased."[2] The Creeks were to be given farms which they should be free to keep or to sell. The whites were to stay out of the Indian country until the government had surveyed the land and made the allotments. This was far too slow for the land-hungry Alabamans. They rushed in upon the Creek lands and refused to move out when soldiers were sent against them. Boom towns were burned and blood was shed in the

[1] This is known as the treaty of Cusseta, where the preliminary negotiations were carried on. The treaty was concluded at Washington, March 24, 1832.

[2] McCorvey, Thomas C., Mission of Francis Scott Key to Alabama in 1833 (Montgomery, Alabama, 1904), p. 145.

controversy that followed between the intruders and the United States soldiers. This strife, however, was not to President Jackson's liking, and as soon as Alabama extended its state laws over the Creek country (December 18, 1832), the President maintained that he had no authority to interfere. He refused to go further in expelling the whites from the Creek lands, and there was nothing for the Indians to do but to move. Thus the great body of the Muskogee Indians joined their kindred of the McIntosh band, who had preceded them to the Indian Territory by five or six years. It must not be understood, however, that the large body of Creeks, possibly sixteen thousand in all, moved at one time. In all these Indian migrations certain groups went one year and others another. Many were transported in steamships by way of Mobile, New Orleans, and the Arkansas River; some went in wagons, others marched. It was years before they had all arrived at their new homes. Probably it was not until 1840 that most of the Indians had arrived in Oklahoma, and as late as 1902 eastern Indians came west to join their kindred who dwelt in this state.

59. Choctaws forced out of Mississippi. The state of Mississippi, even earlier than Alabama, followed the example of Georgia. In 1830 it extended the laws of the state over the Choctaws. This virtually forced the Indians to abandon their homes and to agree to move to the wilderness west of Arkansas, lying between the Red and Canadian rivers. This country had been ceded to the Choctaws in a treaty made with them by General Jackson, October 20, 1820. The Choctaws were less advanced in civilization than the Creeks and Cherokees, and since they were for the most part hunters, it was easier to induce them to move than the tribes that had

become semifarmers. However, only the more restless Choctaws were willing to leave, and the longer the great body of the tribe remained in Mississippi, the less disposed it was to migrate to a new country.

60. Why the Indians could not live under State Law. Although the Indians were unwilling to move, they felt that they could not live under state laws. For instance, one of their head chiefs, Pushmataha, killed one of his subjects. In doing this he acted under his tribal authority, for the Indian had been sentenced to death in accordance with Choctaw law; but under Mississippi law this became murder. The old chief had incurred the hatred of the land companies organized to purchase reservations, and they wanted him out of the way. They therefore employed able attorneys to aid in the prosecution, and he was sentenced to be hanged. The chief, shocked at the mode of execution, begged to die like a warrior, but the court had no power to interfere. When sentence was passed upon him, "Pushmataha rose to his full height, and gave vent to a wild warwhoop, so full of rage and despair that it was terrible to hear."[1] Just before the time of execution the doomed chieftain attempted to commit suicide in jail with a broken bottle. At the last moment, however, he was pardoned, and at once removed to Indian Territory, where he lived a useful life.[2]

61. Treaty of Dancing Rabbit Creek. Under such circumstances it is not surprising that the Choctaws were ready to move. At Dancing Rabbit Creek, September 27, 1830, they agreed to abandon their homes east of the Mississippi

[1] Davis, Ruben, Recollections of Mississippi (New York, 1889), p. 61.

[2] One of the southeastern counties of Oklahoma is named in honor of this chief.

River,[1] but Captain George W. Harkin,[2] a Choctaw chief, makes it clear in his farewell address that the Indians were not leaving their ancestral home through choice. "We go forth sorrowfully," said he, "knowing that wrong has been done." The Choctaws, like the other tribes, did not all move at one time. According to Niles's "Register" there were between four and five thousand Choctaws still in Mississippi in January, 1847. The government transported the tribe chiefly by steamboat; an emigrating party would meet at some convenient wharf on the Mississippi River, where a boat would be in readiness to take them up the Arkansas River to the Choctaw country. There they would be unloaded and left to seek locations in the region to the south.

62. Chickasaw Migration. In 1830 the Chickasaws occupied the northern portion of Mississippi (see map, p. 31), and in that year this state extended its laws over them as it did over the Choctaws. Two years later, at the treaty of Pontotoc Creek,[3] the Chickasaws ceded all their lands to the

[1] This is how the treaty begins: "Whereas the general assembly of the state of Mississippi has extended the laws of said state, to persons and property within the chartered limits of the same, and the President of the United States has said that he cannot protect the Choctaw people from the operation of these laws; Now therefore that the Choctaws may live under their own laws in peace with the United States and the State of Mississippi they have determined to sell their lands east of the Mississippi." Senate Document No. 452, "Indian Affairs: Laws and Treaties" (Washington, 1903), Vol. II, p. 221.

[2] Captain Harkin was a nephew of Greenwood Laflore and succeeded the latter as chief.

[3] The preamble of this treaty also speaks of the hardships put upon them: "The Chickasaw Nation find themselves oppressed in their present position; by being made subject to the laws of the states in which they reside. Being ignorant of the language and laws of the white man, they cannot understand or obey them. Rather than submit to this great evil, they prefer to seek a home in the west, where they may live and be governed by their own laws."— Senate Document No. 452, Vol. II, p. 259.

United States, with the understanding that the lands were to be resold and the money kept on deposit for their benefit. With part of it they expected to purchase a new home. But the movements of the Indians were far too slow to keep pace with the zeal of the white settlers, who wished to appropriate the ceded lands. The whites swarmed in upon the Chickasaws, and another treaty had to be made in 1834 to meet this situation. Finally, on January 17, 1837, the Chickasaws purchased from the Choctaws a district on the Red River west and south of the Washita. They were also to abandon their government by a king[1] and form a part of the Choctaw republic with equal rights. However, they were not required to settle within this district, but were free to take up unoccupied land anywhere in the Choctaw nation. The two tribes were closely related, spoke similar dialects, and for a time this arrangement worked very well.

63. The Seminoles. The word *Seminole* is Muskogee for "wild" or "wanderer." This tribe consisted chiefly of two bands of Creeks who had abandoned their Alabama homes in 1750 and 1808, and had taken up their residence in the swamps of Florida. From time to time they were joined by runaway slaves and predatory bands of Florida Indians. During the Revolution they were under English influence and hostile to the Americans. Again in the War of 1812 they fought the Americans, although they then resided in Spanish territory. In 1819, at the time of the Florida purchase, they came under the authority of the United States. By the treaty of Fort Moultrie, September 18, 1823, they gave up all their lands except a small territory; but certain of the Seminole

[1] Ish-ta-ho-ta-pa was king of the Chickasaws at the time the treaty of 1834 was made.

chiefs objected to leaving the district then inhabited by them, and they were allowed to remain. The granting of this concession led to trouble, for the white settlers clamored for the removal of the Indians.

64. Treaty of Payne's Landing. Finally, in that crowning year of Indian removal treaties, 1832, the government succeeded in getting a quasi treaty from the Seminoles, at Payne's Landing, May 9. Only fifteen of the fifty-two towns of the tribe were represented at this treaty. The Seminoles surrendered their Florida possessions and agreed to move west of the Mississippi River, provided a delegation of seven chiefs, headed by John Jumper and accompanied by Abraham, the negro interpreter, and Major Phagan, their agent, should visit the Creek country and find it satisfactory, and their kindred, the Creeks, kindly disposed toward them. While this delegation was examining the Creek country, the United States commissioners obtained a treaty from the Creeks, ceding a tract of territory to the Seminoles.[1] Then when the Seminole delegation was back at Fort Gibson, the seven chiefs were in some way induced to sign a treaty of removal. It was generally understood by the Indians that the treaty of Payne's Landing was not to be binding until the men sent to examine the new country had made their report to the tribe and it had signified its desire to move.[2] Chief Jumper had no idea he was signing a treaty of removal at Fort Gibson. Back in Florida in 1834 he told General Thompson that they had merely signed a paper which said, "We like the land." At last, after a year of stubborn resistance on the part of the Seminoles, General Thompson told them at a

[1] Treaty of Fort Gibson, February 14, 1833.
[2] Niles's Register, Vol. XLIII, p. 367.

council held April 22, 1835, that they must go. The next day fifteen chiefs agreed to remove. For thus breaking with the majority of the tribe, most of the chiefs, like McIntosh (sect. 46) and the Cherokees of the Ridge faction (sect. 57), paid the penalty of death.

65. Seminole War. The agent, General Thompson, when he found the chiefs obdurate, deposed five of them and put Osceola in irons. The Seminoles, less civilized than the Cherokees and Creeks, instead of submitting to the inevitable, began a war of extermination. With less than five hundred warriors they waged a war against the whites that lasted for eight years, cost the United States $10,000,000 and 1466 lives, and was terminated only after thousands of troops and our most able generals, Scott and Taylor, had been pitted against them. Osceola, for months after his release by General Thompson, waited his opportunity for vengeance, and finally, December 28, 1835, assassinated the agent and four others when at dinner near Fort King. The same day Major Dade and his entire command of one hundred and ten men, except two wounded soldiers who escaped by feigning death, were annihilated. For years the Seminoles waged successful war against great odds, but at last were thoroughly defeated by General Taylor. Most of the survivors then surrendered, but Osceola continued the fight until October 21, 1837, when he was induced to hold a conference under a flag of truce with General Jesup. He was treacherously seized and sent to Fort Moultrie in Charleston harbor, where he was kept a prisoner until his death. By 1842 hardly three hundred Seminoles remained in Florida, and the war ceased.

66. Seminoles in Oklahoma. By 1839 the government had succeeded in transporting to Oklahoma nineteen hundred

of the tribe. At first they settled among the Creeks, but this proved unsatisfactory. The negroes who lived with the Seminoles were claimed as slaves in such numbers by the Creeks and whites that one of their chiefs (Co-a-co-o-chee) with a considerable band of followers retired to Mexico. In 1845 a treaty gave them some relief and a separate tract of land (see map, p. 74), but this tract had no definite boundaries, and it was not until the treaty of August 7, 1856, signed by the United States, Creeks, and Seminoles, that the latter were assigned lands and recognized as a "nation."[1] Some of those who went to Mexico returned later, and one hundred and sixty-four of those in Florida joined their brethren in Indian Territory, so that in 1858 the total number of the tribe was 2253.

67. Summary. We have seen that in 1802 the federal government agreed to drive out the Indian tribes in Georgia as soon as it could be done peaceably. When the Indians refused to sell, the people of Georgia proceeded to make it so unpleasant for them that they had to leave. The other southeastern states, following the example of Georgia, forced the tribes within their boundaries to move. The more civilized tribes, realizing the hopelessness of the struggle, did not resort to arms. The Seminoles, however, attacked their oppressors with savage fury, and, favored by the swamps of the everglades, put the government to vast expense in men and treasure before they were forcibly settled among the Creeks.

[1] See map, p. 74. The new Seminole country was to be the land between the North and South Canadian, beginning a little east of the 97th meridian and extending west to the 100th meridian, which is the Texas line. Close to the 99th meridian the North Canadian crosses into the Cherokee Outlet, and of course the north boundary of the Seminole country followed that line to the west boundary of Indian Territory.

CHAPTER VIII

INDIAN GOVERNMENTS

68. Number of Indians who removed to Oklahoma. We have seen that the Five Civilized Tribes were forced to remove into what is now Oklahoma against the will of a large majority of the tribesmen; that they settled here in large bodies; and that a portion of the country, which had previously had almost no permanent inhabitants, became suddenly the most densely populated of all that great plain far west of the Mississippi. It is difficult to tell with exactness just how many Indians settled in Oklahoma between the years 1820, when the first Choctaws began to arrive, and 1850, when these early Indian migrations were completed. The statistics at hand are not satisfactory. In 1831 it was estimated that the Five Nations, which later became known as the Five Civilized Tribes of Oklahoma, had a total Indian population of 78,600.[1] Schoolcraft, who had ample opportunity to obtain accurate information, gives the population in 1857 as 82,176. Thus in spite of the great number of deaths among them during the years of removal and early settlement, the Five Tribes have so far become acclimated to their new home that they show a marked increase in population. The material, intellectual, and moral development of these Indian nations has been even more apparent.

[1] See estimate in Niles's Register, Vol. XL, p. 50. This estimate evidently omits the six thousand western Cherokees. I have included them in my figures: Cherokees, 21,000; Creeks, 20,000; Seminoles, 4000; Choctaws, 20,000; Chickasaws, 3600.

69. Cherokee Government. The establishment of stable and fairly satisfactory government in all the tribes had not a little to do with this progress. As early as 1820 the eastern Cherokees had divided their country into eight districts, and representation in the national council, which had been organized in 1817 (sect. 41), depended upon elections from these districts. On the death of the chiefs Path Killer and Hicks a few years later, the tribe decided to hold a constitutional convention. This was called by a resolution of the national council, each district sending three delegates, so that the whole convention consisted of twenty-four members. Ross was one of the three delegates elected by the Chickamauga district. Under the constitution adopted, a legislative system was established consisting of two houses [1]: the committee, or upper house; and the council, or lower house. The entire constitution would make scarcely three printed pages of the size found in this book. Although brief and crude, it was the first written constitution to be adopted by any tribe of American Indians, and marked a great step forward.

70. Cherokee Constitution. After coming to Indian Territory the Cherokees enlarged and remodeled their constitution. It then differed but little from the constitutions of most of the southern states. The executive department consisted of a principal chief and assistant principal chief, each elected for four years. In 1890 the principal chief was paid a salary of two thousand dollars per year. He was given the veto power, and one of the duties imposed was that of visiting every district in the nation at least once in two years. Among the chief's executive assistants was the National editor of the *Cherokee Advocate*, who was elected biennially

[1] This in Cherokee was called the "Tsa-la-gi Ti-ni-la-wi-ga."

by a joint convention of the two houses of the council. The legislative department consisted of a senate and council, the members of which were elected for two years. There were nine districts and eighteen senators, while the council consisted of forty members. Very few of the members of either house could, in 1890, read and speak both English and Cherokee. Therefore both senate and council employed interpreters, and all motions, reading of bills, petitions, and all other papers and all speeches had to be in both languages. If a member made a speech or motion in English, the interpreter translated it into Cherokee before any action was taken; and if the speech or motion was in Cherokee, it was repeated in English before being disposed of. The members received three dollars per day. The sessions began the first Monday in November, and the length of session for which pay could be drawn was fifty days. The judicial department consisted of a supreme court of three members. These judges were elected for a term of three years by a joint vote of the two houses of the legislature. The nation was also divided into three judicial circuits, in each of which a judge was elected by the people for a term of four years. There were nine district judges whose jurisdiction was limited to cases involving not over one

Cherokee Capitol, Tahlequah, erected in 1872

hundred dollars. The Cherokee courts had no authority over persons who were not Cherokees. Such "intruders" were tried, or rather were supposed to be tried, at Fort Smith, and except for the most flagrant offenses, they generally went absolutely free. Before 1888 there was no way to settle a civil suit between noncitizens, or between an Indian citizen and some one not amenable to tribal law, except to refer it to the Indian agent.

71. Cherokee Political Organization. The Cherokees carried on spirited elections and organized considerable party machinery. The "national" convention of each party appointed three committeemen, or "head captains," for each district, each of whom had to appoint an additional member. It was their duty to keep in touch with the people of their district. They could call primaries or conventions or make a personal canvass to find out what the people desired. They were expected to learn the sentiments of their constituency and to voice them in the convention, which met to nominate candidates for principal chief and assistant chief. These twenty-seven "head captains," with the additional twenty-seven committeemen appointed by them, constituted a national convention, which was held a full year before the election, generally near a spring and away from any town or house. The conventions of both parties were held the same day and about twelve miles apart. These were occasions of great moment, sometimes lasting four or five days. Barbecues were advertised, and thousands of men, women, and children came from all parts of the nation to assist in choosing the candidates. After the nominations had been made, interest in the campaign subsided until the next spring, when an energetic canvass would begin. The election

was held on the first Monday in August. The voting was *viva voce*, and any male citizen eighteen years of age was a qualified voter. The election rolls were kept until the legislature met in November, when the vote was canvassed and the new chief magistrate of the nation was inducted into office.

72. Creek Government. The Creeks, or Muskogees, were much slower than the Cherokees in developing an organized government. Up to 1867, when the Creeks adopted their written constitution, they were ruled by a sort of feudal aristocracy. The head chief of each one of their clans or towns voted for the whole clan in the national council. There were two principal chiefs, one from the "upper" and one from the "lower" towns, who held nominal sway over the entire nation if they chanced to be men of ability and could exact obedience from the numerous clans and chiefs under them. The new system provided for a principal chief, elected for four years. The upper house of the national council, or legislature, was styled the House of Kings and consisted of forty-eight members; the lower house had ninety-eight members and was termed the House of Warriors. The entire nation was divided into forty-eight clans, all of which were represented in these houses. Some of the clans were wholly negro.

Creek Capitol, Okmulgee, erected in 1878

73. The Creek Constitution. The entire Constitution and Laws adopted in 1867 appeared in a small pamphlet which would make about ten pages of this volume. The criminal code, definitions and all, consists of seven sections of from three to five lines each, covering two thirds of one page. No space was wasted in giving definitions, for everybody was supposed to know what constituted each offense. Thus Section 5 of the criminal code, which dealt with stealing, read as follows: *Be it enacted:* That should any person or persons be guilty of stealing, for the first offense he shall receive fifty lashes; for the second offense, one hundred lashes; and for the third offense he shall suffer death." The penalty was by shooting, irrespective of the amount stolen, and was often inflicted.[1] "When an Indian is condemned to death by shooting, he is given a period, usually thirty days, in which to go home and fix up his affairs. He goes without guard or control, arranges all his earthly matters, bids his friends and family good-by, returns at the time appointed, and is promptly shot."[2] In each tribe there was a light-horse guard whose duty it was to assist in enforcing the law in the respective districts. In the event of a serious disturbance, the principal chief could summon these light-horse guards and, placing himself in command, would find himself at the head of a considerable company. Federal soldiers were also generally quartered sufficiently near to be able to lend their presence for law and order if an insurrection took place.

[1] Beadle, J. H., The Undeveloped West, or Five Years in the Territories (Philadelphia, Chicago, Cincinnati, St. Louis. Copyright, 1873), pp. 386–388. It would be well for the instructor to point out the minute distinctions of our code, there being possibly a dozen offenses, with varying punishments, all of which might be termed "stealing."

[2] Extra Census Bulletin, "The Five Civilized Tribes" (Washington, 1894), p. 9.

74. Insurrection of Stupid Sands. This is just what did occur in 1867 when the new Creek system was put into effect. Under the old aboriginal system each of the two head chiefs was surrounded by numerous minor officials. There were civil chiefs and war chiefs and a vast multitude of office-holders. "Two thirds of the old dignitaries had to go out of office and those who failed of election" were much disgusted. One of them, an archplotter named Stupid Sands (Ok-ta-ha-pars-har-go), raised a company of several hundred, appeared at the council ground on inauguration day, declared in favor of the old system, and announced his intention of breaking up the council by force. Samuel Checota, the chief elect, at once sent away the women and children, called out his supporters, and soon had Sands outnumbered. Sands then appealed to the freedmen, but they failed to respond. Major Lyon, the Creek agent, succeeded in reconciling most of the tribe to the new government. In 1871 Sands was again a candidate for principal chief against Checota and was overwhelmingly defeated. He died in 1873. Ten years later, in 1882, we find Spiechee (Is-par-hec-har) raising the flag of revolt against Checota. He, too, represented the full bloods or reactionary Indians. Pleasant Porter was put in command of the national forces and drove Spiechee down to the Wichita agency in the vicinity of Anadarko. Meanwhile, the military authorities interfered and quiet was restored. In 1895 Spiechee was chosen principal chief, and for a time the full-blood element was in control of the tribe.

75. Crazy Snake. The Crazy Snake (Chitto Harjo) insurrections of 1901 and 1909 are but other outcroppings of this century-old conflict between the progressives and the reactionary full bloods of the Creek nation. Crazy Snake

fled from the state militia in 1909 and is still at large (March, 1910).[1] The large infusion of negro blood in the Creek tribe has prevented intermarriage with the whites, and thus has tended to keep the Muskogees from advancing as rapidly as they probably would have done, had this not been the case. Similar conditions among the Seminoles has also been a handicap to their progress.

76. Seminoles long incorporated with the Creeks. We have seen (sect. 66) that the Seminoles at first settled among the Creeks, the intention being to make them an integral part of the Muskogee nation. But the two tribes could not get along well together, and after the treaty of 1856 the Seminoles had a government of their own, which, however, was hardly more than the old aboriginal tribal system to which they were accustomed in Florida. It was extremely primitive and followed closely the old feudal clan system of the early Creeks and Seminoles. After the Civil War a government somewhat more highly organized was established. It consisted of a principal chief, second chief, treasurer, and superintendent of schools, all elected by the people. The council, or legislature, consisted of a single house of fourteen clan chiefs, which acted as judicial authority of the nation. As late as 1894 the Seminoles had no published laws, and there were but few records of their legislative or

[1] The so-called Crazy Snake uprisings in the Creek nation in 1901 and 1909 were political protests of some of the full-blood or reactionary Creeks at the methods of the Creek government. Chitto Harjo, or Crazy Snake, was proclaimed chief by these dissatisfied Indians. Sensation-hunting newspaper reporters called this a war and telegraphed it right and left. In 1909 the same dissatisfied full bloods protected some of Crazy Snake's lawless followers, and again the newspaper reporters proclaimed another war. Troops were sent to the Creek nation each time, but there seems to have been little need of them.

judicial proceedings. What laws they had were "written in a book preserved by the chief," and respective crimes and punishments were identical with those of their neighbors and kinsmen, the Creeks, except that the principal chief was denied the pardoning power. The chief and the treasurer practically controlled all the business of the tribe. They handled all the stores and supplied the people with merchandise. This business was carried on for the most part without money, due bills on the store at Wewoka serving in its stead.[1] According to the special agent, William H. Ward, "there were but few white people among them" in 1890. Negroes, with whom many Indians intermarried, constituted a considerable part of the nation. These "adopted freedmen," he averred, "as in the Creek nation, enjoyed every right of native-born Indians."

77. The Choctaw Constitution. In the treaty of Dancing Rabbit Creek it was provided that the Choctaws should have either four principal chiefs, each to receive two hundred and fifty dollars per year from the government, or one principal chief, whose salary should be five hundred dollars per year. Naturally they chose the former plan, since it gave them more offices and more money. Thus when the first Choctaw constitution was adopted in 1842, the country was divided into four districts. The Chickasaws composed one of these districts, they being assigned to the country south and west of the Washita River. Each district elected for four years a chief who was eligible for only two terms, these four chiefs constituting the executive department of the nation. If they rejected a bill passed by the council, it could be enacted over

[1] Extra Census Bulletin, "The Five Civilized Tribes" (Washington, 1894), pp. 69–70.

their veto by a two-thirds vote. This council, which consisted of forty members elected annually, assembled the first Monday in each October, and, Schoolcraft tells us,[1] its deliberations were carried on with the utmost decorum. Each chief delivered a message in person, and recommended such laws as he believed to be for the interest of the people. The business was transacted in a large, commodious council house, and the session lasted from ten to fifteen days. The judicial system of the Choctaws was likewise peculiar. The judges were nominated by the chiefs of the district over which they were to preside. Trial by jury was guaranteed in capital offenses, but there was no law for the collection of debts. Schoolcraft comments on the fact that debts were generally paid, however, and also adds that travel was safe in the Choctaw nation. After the withdrawal of the Chickasaws, the Choctaws in 1857 readjusted their constitution, modeling it after that of Mississippi.

78. The Chickasaws object to Choctaw Rule. It will be remembered that the Chickasaws sold outright their country in Mississippi to the government (sect. 62). Their commissioners in 1837 negotiated a treaty for a new home with the Choctaws at Doaksville, near Fort Towson. In this treaty it was stipulated that for the consideration of five hundred and thirty thousand dollars the Choctaws were to cede to the Chickasaws a district in the western portion of their country, and were to allow them to "participate jointly with the Choctaws in the tribal government, with equal rights and privileges." The land was to be held in common by both, but each tribe reserved control of its own funds invested at Washington. Soon a dispute arose as to what constituted "equal rights

[1] Schoolcraft, History of the Indian Tribes of the United States, p. 528.

and privileges." The Chickasaws contended that they were to have exactly as many delegates in the tribal council as the Choctaws, while the latter tribe asserted that "equal rights" meant that the Chickasaws were to be allowed representation according to their population. At the time the Chickasaws moved west almost seven hundred of them died from smallpox, and it did not seem just to the larger tribe that a scant three thousand Chickasaws should exercise equal authority with twenty-one thousand Choctaws. On the other hand the Chickasaws found themselves a powerless minority. . Outnumbered by the Choctaws, the latter controlled national affairs and most of the offices.

Chickasaw Capitol, Tishomingo, erected in 1898

There was the rub with the Chickasaws. Indians have an insatiable craving for office : no Indian is quite happy without one. Here were the Chickasaws with the largest per capita tribal fund and without any tribal government or authority. "The Chickasaws, feeling themselves aggrieved, appealed to the President of the United States. It was then arranged, June 22, 1855, that on paying the Choctaws an additional one hundred and fifty thousand dollars, the Chickasaws were to obtain complete separation from the larger tribe and have political control of their district." But citizens of either tribe had the right to settle within the borders of the other, and

this privilege was held till the lands were allotted. It is because of this provision that we find Choctaws domiciled in the Chickasaw nation, and *vice versa*. In the same treaty the federal government leased all the Choctaw and Chickasaw country west of the 98th meridian. This Leased District was to be used "for the permanent settlement of the Wichita and such other tribes" as the government desired to locate there (see map, p. 137).

79. The Chickasaw Constitution. In 1857 the Chickasaws adopted a constitution and tribal laws. The young man who was sent to Texas with the documents to have them printed, disappeared, and with him the only copy of the Chickasaw statutes in existence. This necessitated an extra session of the national legislature to reënact the lost laws.[1] Under the Chickasaw system the governor or principal chief was elected for a two-year term, and he could not hold office more than four years in any six. The nation was divided into four countries, — Pontotoc, Pickens, Tishomingo, and Panola; each country was entitled to three senators and five representatives, which gave a total of twelve in the upper house and twenty in the lower house. The document varies little from that of similar instruments of the southern states, except that males nineteen years of age were qualified electors and the voting was done *viva voce*. Each elector appeared at the polling place on election day and announced whom he was for. The clerks of election kept a record of the vote, much as we do now.[2]

80. The Government of Agency Indians. The government of those reservation Indians not adopted into one of

[1] Thoburn, J. B., and Holcomb, I. M., History of Oklahoma (San Francisco, 1908), p. 67, note.

[2] Extra Census Bulletin (Washington, 1894), p. 52.

the Civilized Tribes was, and is, a peculiar dual system, partly under the authority of a tribal chief and partly under the control of a federal agent. The chief sometimes obtains his position by inheritance, sometimes by election, but the government always undertakes to see to it that the head chief recognized by the United States is a man friendly to the federal government and not opposed to progress and education. In important matters a council of the tribe is held, but usually the agent directs affairs through the chief. Indian police are appointed, who receive a small salary. They see that the agents' authority is maintained. Gradually the customs of civilized society are being introduced into the tribe, but even yet the Indian laws prevail in many things; polygamy is allowed,[1] and the Indian laws of marriage and divorce are recognized in the courts. However, as soon as an Indian reservation is allotted, the tribal law no longer holds, and, as far as possible, local statutes are applied to the Indians.

[1] Indians can no longer marry more than one wife at a time, but those already living in polygamy have not been disturbed.

CHAPTER IX

PROGRESS OF THE CIVILIZED TRIBES

81. Civilization a Slow Growth. It takes more than a half century to make civilized men of savages. The government of the Five Civilized Tribes, discussed in the preceding chapter, was far from perfect. White men who visited Indian Territory were prone to point out that mismanagement, graft, and murder existed in these so-called "national governments." While this was true, yet we should remember that not a half century before these tribesmen were skin-clad savages, who scalped their enemies and burned their prisoners at the stake. When we remember that these red Indians progressed farther in fifty years than our Anglo-Saxon ancestors advanced in possibly twenty centuries, we must conclude that their development at the time of the Civil War was little short of marvelous.

82. Religious Progress. Progress in civilization, it is true, was extremely rapid in the Five Nations. This was due to the fact that these Indians had exceptional opportunities. Hundreds of God-fearing men and women went among them, and devoted their lives to the moral and intellectual advancement of their red brothers. We have seen with what devotion they labored: two of them even preferring to be entombed in the Georgia penitentiary rather than forsake the Cherokees in the day of adversity (sect. 53). The Cherokees and Creeks were also fortunate in having men of character early marry into the tribes. The influence of

one such man as John Ross could not but be a force for good throughout the entire nation. Even the hard treatment to which these tribes were subjected by the southeastern states did not destroy the religious influence of the white missionaries. In the Cherokee nation in 1851 there was a Bible society at Tahlequah, with branches in each district,

Indian Territory in 1853

and twelve churches. The Reverend C. Kingsbury, a missionary among the Choctaws for over forty years, asserted that when he came to that tribe "witchcraft was practiced, and every form of superstition and vice was abundant." In 1856 he reported that there were fifteen old-school Presbyterian churches with twelve ministers and a membership of sixteen hundred and sixty full-blood Choctaws. The Chickasaws seem to have been for long years outside the sphere of

missionary endeavors, and, like the Seminoles, their marked development followed rather than preceded the reconstruction period (see Chap. XIV). But it was left to one of the minor tribes, the Delawares, which had been incorporated as a portion of the Cherokee nation in 1867, to produce possibly the most famous religious teachers of Indian blood.

83. Chief Charles Journeycake. For over a generation Charles Journeycake was head chief of the Delawares. His mother, Sally Journeycake, was already a consistent Christian when the Delawares were forced out of Ohio. The youth Charles, when but twelve years of age, fell under the influence of a famous Baptist missionary, the Reverend Isaac McCoy (sect. 39). This was in 1829, when the tribe first arrived in Kansas. It is not surprising that with such a mother and teacher young Journeycake became a zealous Christian. The sojourn of most of the tribes in Kansas was a period of debauchery and degeneration: their old life was gone; unprotected by the government, whisky peddlers and frontier roughs made the reservation Indians of Kansas veritable vagabonds. Not so the Delawares. While it was a trying ordeal, — this change from hunter to agricultural life, — yet the tribe so prospered under Journeycake's administration that the year after the Civil War, in spite of depletion by army service and other causes of weakening and discouragement, the Delawares "raised 72,000 bushels of grain, 13,000 bushels of potatoes, and owned 5,000 head of cattle." The move to the Cherokee nation was made because it was felt that the tribe would be demoralized by the tide of immigration that set toward Kansas after the war. In the Territory the Delawares were without an ordained minister, so, when fifty-two years of age (1871), Chief Journeycake was regularly

ordained as pastor of the Delaware Baptist Church. Even at this mature age he was spared to his tribe twenty-two years longer. All his life he was a powerful force for the spiritual and material regeneration of the Indians with whom he came in contact.[1]

84. Missionaries aid Education. The church of the missionary was often preceded, and always immediately followed, by the mission school. Here the church made the greatest impression on the aborigines. The Indian was not only instructed in books but in crafts and industries. The young men were taught how to plow and to farm and how to succeed with their herds of cattle and horses. Indian girls were instructed in cooking, weaving, dressmaking, and the various duties of a neat and successful housewife. So in a measure the Indians of the Five Civilized Tribes were prepared to settle down and cease their hunter life at the time the game disappeared. Moreover, in President Grant's administration, the federal government, after a century of mismanagement, adopted this policy of educating industrially the Indians so that they might support themselves and not depend entirely upon the rations and annuities of the Indian agents. Most of the bitter Indian wars that have marked with blood the pages of American history were due to the policy of the government in forcing the red men upon reservations where they could not obtain a living by hunting, and then neglecting to teach them how to farm, and at the same time often failing to provide them with food. A starving Indian differs little from a starving white man; either, under such circumstances,

[1] Mitchell, Rev. S. H., The Indian Chief, Journeycake (Philadelphia, 1895). See also Extra Census Bulletin, "Five Civilized Tribes" (Washington, 1894). Chief Journeycake was born in Ohio, December 17, 1817, and died in Indian Territory, January 3, 1894.

would be apt to go on the warpath. It is not to be doubted that it was the persistent efforts of the missionaries that restrained four of the Five Civilized Tribes from resorting to war and thus inviting their own destruction at the time of their forced removal west of the Mississippi. Long before their emigration mission schools had been established in all the tribes but the Seminoles.

The American Indian takes readily to education. He early realized that by this means alone he could defend himself against the encroachments of the whites. As early as 1803 the Reverend Gideon Blackburn, a Presbyterian from Virginia, had established a mission school among the Cherokees. In November, 1825, the Choctaw chief, Peter P. Pitchlynn, took twenty-one youths of that tribe to Blue Springs, Kentucky, to attend a school conducted by Colonel Richard M. Johnson.[1] From time to time in Niles's "Register" we find reference to a Choctaw or a Cherokee who had subscribed for a certain paper. It was always counted an incident of sufficient importance to be given editorial mention. Indeed, a willingness to spend money in this way is a certain indication among the Indians of advancing civilization.

85. Tribal Schools. Each tribe, on its removal to Indian Territory, had its tribal funds perceptibly augmented. Large sums of money, the interest of which went to support the tribal governments, were kept on deposit at Washington. It is evident that if the Indians of the Civilized Tribes had been compelled to tax themselves to support their schools,

[1] This is the same Colonel Johnson who was famous for having killed Tecumseh at the battle of the Thames, and was later elected Vice President in Van Buren's administration. See Niles's Register, Vol. XXIX, p. 226. Also Gregg's Commerce of the Prairies; Thwaites's Western Travels, Vol. XX, p. 306, note.

there would have been no taxes and no schools.[1] Deficient as these schools were, they were yet an evidence of progress and bore testimony to the influence the missionaries had in tribal councils. Every one of the Civilized Tribes voted large sums for education, and from 1850 no child born in any of

Bloomfield Academy, Bryan County, a Typical Boarding School of the Five Civilized Tribes. This is a Chickasaw Institution

the Civilized Tribes was obliged to be illiterate. In 1851 the Cherokees supported twenty-two primary schools, and had

[1] After 1898, when towns were incorporated in Indian Territory under Arkansas law, public schools supported by taxation were then first established (see Abbott's Oklahoma School Civics, sects. 55, 57). No later than 1908 we have heard an intermarried Chickasaw, whose allotment, along with those of his wife and children, was possibly worth fifty thousand dollars, complain bitterly that he should now have to pay taxes after having lived here twenty years without ever having paid a cent.

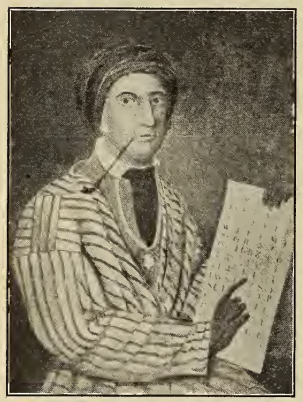
just erected two large buildings for male and female seminaries. A newspaper was maintained at public expense, and nearly one thousand boys and girls were in daily attendance at the public schools. The Choctaw government in 1857 contributed fifty thousand dollars to the support of six boarding schools, in which three hundred and twenty pupils received instruction. "As a body the Chickasaws did not advance as rapidly as the Choctaws, their large annuities encouraged idleness and improvidence. . . . Their first school was not established until 1851."[1] A liberal policy toward intermarried whites and stock raisers tended toward educational advancement in both the Chickasaw and Choctaw tribes, through the efforts of these white men. Before the Civil War the Creeks and Seminoles had no organized governments, and educational interests seem to have been wholly in the hands of the churches that conducted missions among them. In 1872, five years after the adoption of the Creek constitution (sect. 73), there were thirty-three tribal schools with seven hundred and sixty pupils in attendance, and the Seminoles with four schools had an enrollment of one hundred and sixty-nine pupils. This bespeaks not a little interest in education, when we bear in mind the havoc the dissensions of the Civil War wrought in both these tribes.[2]

[1] Extra Census Bulletin, "Five Civilized Tribes" (Washington, 1894), p. 30.

[2] The report of Francis A. Walker for 1872 follows:

	Population	Schools	Scholars
Choctaws	16,000	36	819
Chickasaws	6,000	11	376
Creeks	12,295	33	760
Seminoles	2,398	4	169
Cherokees	16,300	60	—

86. Education in the Minor Tribes. The meager educational advantages offered members of the minor tribes previous to the Civil War were entirely the result of voluntary efforts of the missionaries. It was not until within the last twenty years that the federal government saw to it that every child of Indian blood was offered adequate educational advantages. This is done chiefly through an extensive system of government boarding schools (see Abbott's "Oklahoma Civics," pp. 30–32).



Sequoyah (George Guess), Inventor of the Cherokee Alphabet

87. Sequoyah. Not a little of the progress among the Cherokees was due to the ingenious invention of an alphabet by a half-blooded Cherokee, Sequoyah. By means of this device the Cherokees could learn to read and write their own language almost without effort. Sequoyah, whose other name was George Guess, was the son of a German trader by a Cherokee mother, and was probably born in 1760. As a boy he became aware that the white men had a system of making marks that could be understood at a glance. "He requested an educated half-breed, named Charles Hicks, to write his name, which being done, he made a die containing a facsimile of the word, which he stamped upon all the articles fabricated by his mechanical genius." Later young Guess fell into idle and dissipated ways, but "in the year 1820, while on a visit to some friends in a Cherokee village, he listened to a conversation on the

art of writing, which seems always to have been the subject of great curiosity among the Indians. Sequoyah remarked that he did not regard the art as so very extraordinary, and believed he could invent a plan by which the red man might do the same thing."[1] He immediately set to work, and, in spite of the ridicule of his neighbors, successfully completed the invention.

88. Cherokee Alphabet. It happened that the Cherokee dialect was composed of but eighty-five sounds or syllables. Sequoyah observed this and devised a character for each one of these sounds. So practical was his device, that a Cherokee could read as soon as he learned his alphabet. It is said that a clever boy could "thus be taught to read in a single day."[2] And Albert Gallatin wrote in 1836 that Sequoyah "was enabled to teach within three weeks every Cherokee old or young, who desired it, how to write his own language." We have seen that as early as 1828 Elias Boudinot was publishing a Cherokee paper at New Ec-ho-ta in these characters (sect. 70), and that the *Cherokee Advocate*, afterwards established at Tahlequah, was printed half in English and half in the native characters of Sequoyah. The Creeks and Choctaws likewise had a written language, but the system of writing was devised by missionaries and not by a native. The Seminole and Chickasaw, being but slight modifications respectively of the Creek and Choctaw, seem never to have been systematized into a written language.

89. Sequoyah Head Chief of Western Cherokees. In 1820 Guess visited the western Cherokees in Arkansas Territory

[1] *North American Review*, quoted by Jackson, Century of Dishonor, p. 404.

[2] *The Saturday Magazine* (London, April, 1842), quoted in Jackson's Century of Dishonor, p. 405. Also see report of Albert Gallatin, quoted in Extra Census Bulletin, "Five Civilized Tribes" (Washington, 1894), p. 38.

and soon introduced the art, so that on his return home a correspondence was opened in the Cherokee language between the two branches of the nation. In 1823 he was voted a silver medal by the general council of the tribe, and in 1872 we find the united tribe in the Indian Territory paying his widow an annual pension of three hundred dollars.[1] Probably as early as 1823 he joined the western Cherokees and was chief of the Old Settlers in 1838–1839, at the time of the migration of the eastern division of the tribe. Disgusted at the turn affairs took when the Ross faction assumed control of the nation, he went farther west and died in New Mexico, probably in 1844. He never learned to speak or understand English, and his name appears on the Act of Union of 1838 signed, "George Guess, his (×) mark."

90. Security of Life and Property in the Indian Territory. The progress of these Indian governments can best be shown by the security of life and property within the limits of the Five Civilized Tribes. Travel was as secure in this region, as far as the Indians were concerned, as in the streets of Washington City. It was the renegade white who was the chief author of mischief when it occurred. Each of the tribes had strict laws against the introduction of liquor. Invariably it was lawless whites or half-breeds who engaged in this illicit commerce. The Indian, crazed with bad whisky, would then commit the gross offense that never would have occurred had he not been thus insnared. "As a people," wrote Schoolcraft in 1857, "the Indians are as temperate and sober as an average community in the states." Washington Irving gives us a striking picture of one of these white renegades who had taken up his residence in the Indian

[1] Beadle, J. H., The Undeveloped West, p. 423.

country against the will of the lawful owners of the land. He is a fair sample of these white intruders:

"On the verge of the wilderness we paused to inquire our way at a log house, owned by a white settler or squatter, a tall raw-boned old fellow, with red hair, a lank lantern visage, and an inveterate habit of winking with one eye, as if everything he said was of knowing import. He was in a towering passion. One of his horses was missing; he was sure it had been stolen in the night by a straggling party of Osages encamped in a neighboring swamp; but he would have satisfaction! . . . While we were holding a parley with him on the slope of the hill, we descried an Osage on horseback issuing out of a skirt of wood about half a mile off, and leading a horse by halter. The latter was immediately recognized by our hard-winking friend as the steed of which he was in quest. . . . I had expected to witness an expression of gratitude on the part of our hard-favored cavalier, but to my surprise the old fellow broke out into a furious passion. He declared that the Indian had carried off his horse in the night, with the intention of bringing him home in the morning, and claiming a reward for finding him; a common practice, as he affirmed, among the Indians. He was therefore for tying the young Indian to a tree and giving him a sound lashing; and was quite surprised at the burst of indignation which this novel mode of requiting a service drew from us. Such however is too often the administration of law on the frontier. . . . In this way, I am convinced, are occasioned many of those heart-burnings and resentments among the Indians, which lead to retaliation and end in Indian wars."[1]

91. How the Civilized Indians Lived. The Civilized Tribes no longer used tents or skin-covered poles for houses when they first came to what is now the state of Oklahoma. For the most part they lived in isolated log cabins near springs or streams. There were no cities or towns worthy of the name in the entire territory. Tahlequah, the capital of the Cherokees, and Doaksville, within a mile of Fort Towson, were probably the most like cities previous to the Civil War. Neither were more than straggling, unincorporated villages

[1] Irving, Tour of the Prairies, p. 2.

of possibly three hundred inhabitants. Some of the more progressive Indians, especially those with white blood, fenced great fields and farmed extensively. But the more backward tribesmen dwelt in the rough places and raised barely enough to supply their meager wants. The Indians by nature seem averse to physical labor. As far as we know, the only full-blood Indians in Oklahoma who to-day perform hard manual labor from one month's end to another are the Apache prisoners of war, and they do so only because they are compelled to. It was a natural development that when game became scarce the Indians, having been hunters, should become herdsmen rather than farmers. Up to the time of the Civil War, which is a natural line of demarcation here, as elsewhere in the South, most of the tribesmen possessed large herds of horses and cattle.

92. The Indian's Home. Among the Civilized Tribes the usual Indian home was a poorly chinked log cabin, with dirt floor and log chimney lined with clay. There were a few of the most necessary kitchen utensils, a stool or two, possibly a chair, and a rifle on the wall. Behind the house there was usually a lot made of poles and a crib of like construction, and, if the Indian owner of the domicile was especially careful of his stock, a lean-to barn. A field fenced with rails gave evidence that agriculture was not one of the entirely unknown arts. Here sufficient corn was raised to supply the family with hominy, and little cotton was produced and woven into cloth. But in some ways advancing civilization seemed rather to arrest the Indian's development than to promote it. As soon as cloth could be obtained in exchange for horses, the loom and its uses were forgotten. Thousands of head of cattle and hogs, which, with ponies, constituted the Indians'

chief wealth, ran at large throughout the Indian country. Such was the average Indian home before, and indeed long after, the Civil War. To be sure, there were progressive Indians, just as there were progressive white men. The homes of these Indians would challenge comparison with those of any other men in like circumstances. Along Red River in the Choctaw nation, and in some valleys of the Cherokee and Creek nations, were large and productive plantations.

93. Social Disposition of Indians. Since the Indians were not hampered by zealous striving for a livelihood like white men, but were contented with the meager existence afforded by their annuities and their perfunctory efforts at farming and stock raising, they had ample time for amusements. Naturally gregarious, they were, and still are, persistent visitors. Even to-day in western Oklahoma, among the less advanced Plains Indians upon whose hands time hangs heavily, periodical visitations are the chief summer diversion. Everything a home afforded was set before the numerous company of visiting men, women, children, and dogs on its arrival at a settlement. When the provender at one domicile was exhausted, the entire company would strike camp to prolong the visit with other kin or acquaintances.

94. Indian Dances. When a company of Indians has assembled, the principal entertainment is dancing. If the Indians are "civilized," the squeaking violin will mark the cadence of the step; if they still cling to the blanket and tepee, the monotonous beating of a tom-tom will measure the diapason of the dance.[1] The ceremonial dances of the tribes are still

[1] Lanchet, Joseph, "Diary of a Young French Immigrant," *Sturm's Oklahoma Magazine* (July, 1909), p. 49. In speaking of the Pottawatomies in 1889 he says, "A few young ladies can play on the piano, . . . a few young men can also play on the violin, and dancing parties are of frequent occurrence."

numerous. The war dance, long since relegated to the past, has given place to the green-corn dance, the wedding dance, or some other dance peculiar to one of the tribes.

95. The "Busk." Of these dances none was more interesting than the "busk," or green-corn dance, of the Creeks. Some such harvest celebration is found among all Indian tribes. As they become civilized the festivities take on white men's conventions, but the dance is still retained in some form or other.

The people assemble in a gala attire, and at daybreak the principal medicine man, clad in full regalia of his office, repairs to the square and proceeds with much labor to kindle a new fire by the friction of two dry sticks, after which a young man enters from each corner of the square, bearing a stick of wood. They approach with much reverence, placing the ends of the sticks to the fire in a manner corresponding to the ends of the compass. The fire being sufficiently kindled, four other young men enter in a like manner, each bearing an ear of green corn, which the medicine man also places with much reverence upon the blaze. After it is consumed, four gayly dressed men enter, each bearing some new snakeroot, a portion of which the medicine man likewise consigns to the flames, the balance being at once cooked for use. During these formalities the medicine man is continually muttering some unintelligible jargon, which the superstitious believe is a communication with the Great Spirit. This ceremony over, the faithful, assembled around the square, proceed to indulge in potions of a decoction of snakeroot, which to a civilized stomach is anything but pleasant. The new fire is then distributed among the people outside the square for general use, and women are permitted to take it to their houses and camps, which have been decorated for its reception, all the old fire having been previously extinguished and ashes swept carefully away. During this time the men keep inside the square, and no woman is permitted to enter it. The second and third days are devoted to fasting, drinking medicine, sleeping, or such amusements as the votaries may elect. Both men and women rigidly abstain from food. To eat salt is blasphemy. On the fourth day all of the people assemble inside of the square, — men, women, and children promiscuously, — and the day is devoted to feasting and

rejoicing. Large quantities of green corn and other provisions are collected and cooked by the women over the new fire. An ox is barbecued and given to the public. . . . The evening is spent in dancing around the new fire and the "busk" is ended.[1]

96. Indian Ball. George Catlin (sect. 29) and others give most interesting accounts of Indian ball games, in which the young men participated with much zest. Goals were erected like those used in football. Short, tough sticks with rawhide cups or spoons were used for throwing and carrying the ball, which was small and hard. With such a club in each hand the players sought to force the ball through their opponents' goal. Apparently about the only rule observed was that the ball could not be touched with the hands, for a contestant would not hesitate to strike an opponent's arm as he ran with the ball, or, using both clubs, he would pinch another player until blood came. The number of players on a side varied from a dozen to one hundred. They played with such reckless zeal that a game was seldom finished without some one being seriously hurt, and deaths among the contestants were not uncommon.

[1] Extra Census Bulletin, "The Five Civilized Tribes" (Washington, 1894), p. 66.

CHAPTER X

EARLY MILITARY HISTORY OF OKLAHOMA

97. Early Indian Wars. Previous to the Civil War there were no important battles fought in Oklahoma. We have seen (Chap. I) that in 1541 the Spanish crossed the state from south to north, but, so far as we know, Coronado had no difficulty with the Indians of the plains. The French, who next invaded the Mississippi Valley, showed a peculiar facility in getting along peaceably with the Indians, and during the century that they were in possession of the country now known as Oklahoma, we fail to find the record of a single conflict. But the various Indian tribes that hunted here had many a bloody skirmish with one another. It is impossible to explain the bitter hatreds and tribal antipathies that instigated these petty wars. The chances were that if two hunting parties from different tribes met upon the prairie, the pursuit of game was immediately stopped and fighting was begun. But the bones that bleached upon the plains have long since disappeared, and no record is left of these countless skirmishes.

98. Battle of Claremore Mound. Naturally the Plains Indians, who had long regarded the Arkansas and Canadian valleys as their individual hunting grounds, resented the intrusion of the Five Civilized Tribes. From the time when the Choctaws, Creeks, and Cherokees began to arrive in their new home, the Plains Indians, especially the Osages, waged relentless war upon them. The Cherokees finally

gave the Osages a decisive defeat at Claremore Mound in June, 1818. This battle was fought near the present city of Claremore in Rogers County. The engagement takes its name from the famous Osage chief Clermont, or Claremore, who commanded the Osages in the battle and there lost his life (sects. 17, 19). The Cherokee chief was Captain Dutch (Tarche).

99. Santa Fe Trail. There were numerous other struggles between the Five Nations and their less civilized brothers, but soon the coming of the white men in considerable numbers led the Plains Indians to direct their attacks chiefly upon them. The Santa Fe Trail, first used in 1822, was established by Congress in 1825 and was actually marked out in 1832. By this time a considerable trade had grown up with the Spanish in New Mexico, and fur trading with the Indians had developed into a profitable business. This naturally brought many white men into Oklahoma, for while the Santa Fe Trail[1] merely crossed the western portion of No Man's Land, in what are now Texas and Cimarron counties, yet men from the Spanish possessions on the Rio Grande would sometimes cut across Oklahoma in returning to the states. Albert Pike, in 1832, made such a trip (sect. 108). These frontiersmen were often rough characters. Frequently they failed to treat the Indians properly. They hunted a great deal and thus took from the Plains Indians almost their only source of food supply. It is not surprising, therefore, that the Indians resented their intrusion. In 1847 it was reported that no less than forty-seven persons had been

[1] See Gregg's Commerce of the Prairies, chap. i; Thwaites's Early Western Travels, Vol. XIX, p. 173, in which may be found an interesting account of the Santa Fe Trail.

killed by Indians in raids on the Santa Fe Trail. Three hundred and thirty wagons had been destroyed, and sixty-five hundred head of horses, mules, and oxen had been killed or stolen.

100. Van Dorn attacks the Comanches. Many were the expeditions sent out and councils held in the region extending from Texas to the Dakotas, to put an end to these clashes between whites and Indians. Probably the most important expedition of this character in Oklahoma was that of Major Earl Van Dorn (sect. 118), who in 1858 was sent against the turbulent Comanches and Kiowas. He established a camp on Otter Creek [1] near the Wichita Mountains, where these tribes had been located by the government. The Wichitas induced a large number of Comanches to go with them to their camp for a peace council. Major Van Dorn afterwards asserted that he knew nothing of their approach, nor what they were there for. However, at a time when the Indians were wholly unaware of danger (October 1, 1858) he fell upon them and killed a large number of Comanches. It must have looked like wanton murder to the Comanches.[2] The soldiers also laid waste the fields of the Wichitas and burned their grass tepees. The Comanches felt that they had been betrayed by the Wichitas, and became their bitter enemies. The unfortunate Wichitas, with their homes burned

[1] It was known as Camp Radziminski (Kiowa County), being named for a young lieutenant of cavalry who had died a few weeks before. The camp was abandoned in December, 1859, after the establishment of Fort Cobb.

[2] This is General Albert Pike's opinion of this attack: "General Van Dorn has been actuated by personal hatred of me, owing to my reports to the government, old and new, in regard to his attack at daylight on a Comanche camp of men, women, and children, who had come in under the promise of protection from the commandant at Fort Arbuckle." — Rebellion Records, Series I, Vol. XIII, p. 954.

and fields ruined, fled for protection to Fort Arbuckle, their effort to act as peacemakers having resulted only in getting them into trouble.

101. Forts established to protect Whites and Civilized Tribes. As soon as it became the definite policy of the government to settle Indian tribes in the western portion of Arkansas Territory, forts were established to protect the whites and also to keep the Indian tribes from fighting with one another. It is interesting to note how troops were shifted about from place to place as the centers of difficulty changed. Where the soldiers were needed forts were built. We have noted that Fort Smith (1817) was the first of these, and that it was established to keep the Osages and western Cherokees at peace (sect. 20). A complete chain of forts eventually extended along the northern border of Texas, and another series of military posts was established in Kansas. The first strictly Oklahoma garrison was that of Fort Gibson,[1] located at the juncture of the Neosho and Arkansas rivers in February, 1824. This was the first permanent white settlement

[1] Named for Colonel George Gibson. It was first known as Cantonment Gibson, and for a long time a camp for soldiers, which was always spoken of as the Cantonment, was maintained near it. Many famous Americans have, at one time or another, lived at Fort Gibson. Besides those mentioned in the text, it is interesting to note that Zachary Taylor was once stationed there. And there Jefferson Davis, president of the Confederacy, probably first met the general's daughter, Miss Sarah Taylor, whom he later married at Louisville, Kentucky. To this post, in 1829, came Sam Houston, the future liberator of Texas, when, for some unknown reason, he deserted his wife and the governorship of Tennessee at one and the same time. Near there he lived with his Cherokee wife, Talehina (Tiana) Rogers, whom he in turn deserted when he went to Texas in 1832. Nathan Boone, a son of Daniel Boone, the famous frontiersman, was long stationed at this post as a captain of dragoons. And to Fort Gibson came James G. Blaine, to forget in the wooded solitudes of the Neosho the disappointment of his defeat for the presidency.

in Oklahama. Fort Coffee[1] (1834–1838) and Fort Wayne[2] (1838–1842) were maintained to serve the double purpose of protecting the Arkansas border and keeping harmony among the Cherokees after the Ross faction was forced to move west (sect. 57). Fort Towson[3] on the Kiamitia, in what is now Choctaw County, was first garrisoned in March, 1824, a month after Fort Gibson. Troops were sent here to protect the Arkansas and Texas frontiers and keep peace among the Choctaws.

102. Forts in Central and Western Oklahoma. Fort Towson was not abandoned until 1854, at which time forts were established along the Washita River in the Chickasaw district, to protect the Civilized Tribes from the raids of the wild Plains Indians west of them. Fort Washita[4] (1842–1861) was the first of these. It was located on the Washita, in what is now known as Bryan County, twenty-two miles from Red River. Nine years later (April 19, 1851) Captain R. B. Marcy, previous to his Red River expedition (sect. 26), established Fort Arbuckle,[5] west of Davis on the north slope

[1] Fort Coffee was named for General John Coffee, an Indian commissioner who negotiated treaties for the removal to Oklahoma of several southern tribes. The post was located on the Arkansas River, twelve miles above Fort Smith, in what is now Sequoyah County. Established in June, 1834, it was abandoned four years later, October, 1838.

[2] Fort Wayne, named for General Anthony Wayne of Revolutionary fame, was located (October 29, 1838) on Spavinaw Creek, in what is now Delaware County. It was abandoned May 26, 1842, on the establishment of Fort Scott, Kansas.

[3] Named for General Nathan Towson.

[4] Fort Washita was first garrisoned, April 3, 1842. It was abandoned by the federal government, April 16, 1861, when the Union forces were compelled to retreat north at the beginning of the Civil War.

[5] Fort Arbuckle was named for General Matthew Arbuckle, who long commanded the military district including the Indian Territory. It was not abandoned until June 24, 1870, when the location of Fort Sill farther west made it no longer necessary.

of the Arbuckle Mountains, which evidently take their name from the fort. We have seen (p. 90, note) that Fort Cobb[1] (1859–1869), also on the Washita but farther west in the Chickasaw leased district, had its beginning about the time of Major Van Dorn's expedition to the Wichita Mountains. Fort Supply (1868–1891), Fort Sill (1869), and Fort Reno (1874) were not established until after the Civil War. They were needed in order that a force should always be at hand to compel the Plains Indians to remain upon their reservations. Thus it is seen that the establishment and abandonment of these posts depended upon our relations to the Indian tribes. During the great war that devastated the entire Indian country from 1860 to 1865 most of these old forts were reoccupied and many new ones garrisoned. To-day Fort Sill is the only post in the state, and is maintained not as a means of pacifying turbulent tribesmen, but as an artillery training station. Fort Reno is still owned by the national government, but is used merely as a great military horse ranch.

[1] Fort Cobb was named for Howell Cobb, secretary of the treasury in Buchanan's cabinet. Established October 1, 1859, it was finally abandoned March 12, 1869, after the establishment of Fort Sill.

CHAPTER XI

FIRST YEAR OF THE CIVIL WAR

103. Why the Five Nations favored the South. The real military history of Oklahoma begins with the Civil War. It was not surprising that most of the Indians of the Five Civilized Tribes should side with the Confederacy for these reasons: (1) slaves were held in all the Five Nations; (2) Indian Territory is in the South, and Southern sentiment would naturally prevail here; (3) most of the white men who had married into the tribes were from the South; (4) apparently all the federal Indian agents in the Territory at the beginning of the war were Southern sympathizers and advised the Indians to break relations with the government at Washington;[1] (5) early in the war the North abandoned all its forts in the Territory, and friendly as well as neutral tribes were left at the mercy of their opponents. Under the circumstances the Indians could not do otherwise than side with the South.

104. Choctaws and Chickasaws a Unit for the South. The two Red River tribes, the Choctaws and the Chickasaws, were a unit for the Confederacy.[2] The three more northern nations were not so unanimous. As early as February 7, 1861, long before the news of the organization of the Confederate government could have reached the Indian country, we find that the general council of the Choctaw nation had resolved: "That

[1] Rebellion Records, Series IV, Vol. I, No. 127, p. 360.

[2] It is reported that there were but forty Chickasaw families loyal to the Union, and that only seventeen Choctaws enlisted in the Northern army.

in the event a permanent dissolution of the American Union takes place, our many relations with the general government must cease, and we shall be left to follow the natural affections, education, institutions, and interest of our people, which indissolubly bind us in every way to the destiny of our neighbors and brethren of the Southern States. . . ."[1] Three months later, May 13, 1861, the Chickasaw legislature formally declared the treaties of alliance and friendship existing between the United States and the Chickasaw nation dissolved in favor of an alliance with the Confederate states.

105. Union Forces abandon Forts. During April and May, 1861, all the federal troops in the Indian country abandoned the region. Lieutenant Colonel William H. Emory was in command of the department. He was unable to get orders from Washington or St. Louis, and being of Southern birth he hesitated to engage in a civil war, although he was loyal to the Union. On March 18 he was ordered to concentrate his forces at Fort Washita, just north of the Texas line.[2] He undertook to do this, but supplies for the command were seized while coming up the Arkansas River. He felt unable to hold the fort and it was abandoned April 16. On May 5 Fort Arbuckle was captured by Texas troops without a fight, and on the 9th Colonel Emory fell in with the troops from Fort Cobb, for this post had been abandoned on the 5th. On April 23 Fort Smith was relinquished because of lack of supplies. All these posts were immediately seized by the Confederates, Colonel Emory retreating into Kansas, and thus by May 19, 1861, the whole of Indian Territory was abandoned to the South. Fort Smith, which was on the border,

[1] Rebellion Records, Series I, Vol. I, p. 682.
[2] Ibid., p. 656.

was in the possession of Arkansas militia and was soon to be turned over to the Confederacy. Fort Leavenworth, in Kansas, was the only vantage point left the Union in all this western region.

106. Confederates Organize. While the North was distracted because of resignations from the regular army and because of conflicting ideas as to what should be done, the South went energetically to work to win all the slave territory. On May 13, 1861, Captain Benjamin McCulloch of Texas was commissioned a brigadier general in the Confederate service and was placed in command of the "military district" of Indian Territory. He was to have command of one regiment each from Arkansas, Louisiana, and Texas, with three regiments to be raised from the Five Nations. It seems that General McCulloch never took personal control of affairs in the Indian country, his commanding ability being demanded elsewhere in the South.

107. Indians make Treaty with Confederates. With a view to winning all the Civilized Tribes to the Confederacy, L. P. Walker, the Confederate secretary of war, appointed (May 14, 1861) David Hubbard, of Alabama, superintendent of Indian affairs for the tribes of Indian Territory.[1] Captain Albert Pike of Arkansas, who was much interested in winning over the Indians to the South, was also designated a commissioner to treat with the Indians to secure offensive and defensive alliances.

108. Captain Albert Pike. Captain Albert Pike was a peculiar, erratic genius, who for the next two years played an important part in Oklahoma history. Born in Boston in 1809, he was compelled to leave Harvard College because

[1] Hubbard came to Fort Smith, but never assumed the office.

of lack of funds. Coming West in 1831, he found himself stranded at Santa Fe, and made his way with five companions across the plains to Fort Smith, where he arrived in 1832. Here he taught school, edited a paper, studied law, and soon took a leading part in affairs. He was a captain in the Mexican War, and gained considerable renown as a poet. Living on the border of the Indian country and being a linguist, he soon mastered the Indian dialects, thus becoming a power among all the Civilized Tribes. He zealously espoused the cause of the South at the commencement of the war, and his relations with the Indians, as their attorney, made it possible for him to secure treaties from them in behalf of the Confederacy that would have been difficult for any one else to have obtained.[1] But he was temperamentally unfit to command an army, and he did the Confederates more harm in Indian Territory than any federal officer sent against them.

109. Pike secured Treaties. As soon as General Pike was appointed Indian commissioner, he set about securing the desired treaties. Early in July and again on August 1, 1861, he met delegates from the Choctaws, Chickasaws, Creeks, and Seminoles, and treaties were negotiated. Pike pointed out how the federal government had deserted the entire region, and promised on behalf of the Confederacy to carry out all the treaty agreements between the Indian nations and the United States. But the Cherokees, under the conservative leadership of their principal chief, John Ross, were more cautious. Ross called a convention of the Cherokees, which met August 21, 1861. This convention, after considerable deliberation, voted to form an alliance with the Confederacy,

[1] A large portion of Rebellion Records, Series IV, Vol. I, No. 127, is filled with these Indian treaties Pike made for the Confederacy.

but the treaty was not actually signed until October 7, 1861. It is worth noting that the Cherokee convention was not called until after the battle of Wilson Creek (August 10, 1861). The defeat of the Northern troops in this engagement, and the fact that the federal forces had completely abandoned the Indian country, put such a damper upon Union sentiment among the Indians that for a time the Confederates had everything their own way. Moreover, the Confederate agent, Pike, agreed to pay all the annuities which the federal government owed the Indians but had failed to pay since the war began.

110. Why the Cherokees Divided. Secession sentiment in the three northern tribes was far from being as unanimous as in the Choctaw and Chickasaw county. While the slavery question played an important part in this alignment of sympathies, the old Ridge and Ross hatreds (sect. 57) cropped out again in the Cherokee nation. It is not surprising that when Stand Watie espoused the Southern cause so eagerly, John Ross should have leaned toward the North. Ross's long years as principal chief of the Cherokees bear striking evidence of his conservatism, and it is evident that he must have believed that the best policy for the Cherokees was to keep clear of the controversy. Finally, when he found this impossible, his dislike for Stand Watie and other ardent Confederates naturally would have driven him into the Union camp. Moreover, Ross had not forgotten the treatment he had received at the hands of the Georgians. Stand Watie,[1] who had favored the removal treaty, could easily side with the state that had abused his people, but not so Ross. His

[1] Stand Watie was a younger brother of Elias Boudinot, who was assassinated for signing the removal treaty.

treaty with the Confederates was in all respects a league formed for the sake of policy and not out of devotion to the Southern cause.

111. Why the Creeks Divided. A similar feud between rival factions in the Creek nation had much to do with the desertions in that tribe. Yo-ho-la and his followers, it will be remembered, assassinated General William McIntosh back in Georgia in 1825 (sect. 46) for having signed a removal treaty. Now D. N. McIntosh became colonel of a Creek regiment, and his brother, Chilly McIntosh, lieutenant colonel of the same organization. They were sons of the General McIntosh who had been " executed " years before by Yo-ho-la and others of his way of thinking. Thus with the old chief " it was not a question of loyalty or disloyalty to the United States, but simply one of self-preservation." [1] When he found that the two McIntosh brothers had been given high commissions in the Confederate service, he and his followers, possibly two thirds of the Creek nation, struck out for Kansas. They were accompanied by large detachments from the Seminoles and by a few Cherokees. It is evident that Yo-ho-la was encouraged to take this step by the promise of federal aid, because letters had been exchanged between him and E. H. Carruth, the United States commissioner. At this time letters were also written to other chiefs by the federal commissioner. The one to the chief of the Wichitas, like the others, was dated Barnesville, September 11, 1861, and read as follows :

It is the wish of the commissioner of the United States government that you either come to Kansas with your friends the Seminoles, or send two or three of your best braves. We also want the Keechies,

[1] Battles and Leaders of the Civil War (New York), Vol. I, p. 336.

the Ionies, Caddoes, and Comanches to send some of their men to meet and have a talk with the commissioner of Your Great Father at Washington. His soldiers are as swift as the antelope, and brave as the mountain bear, and they are your friends and brothers. They will give you powder and lead. They will fight by your sides. Your friend Black Beaver will meet you here. . . . The Texans have killed the Wichitas; we will punish the Texans. Come with your friends the Seminoles.[1]

Thus large numbers of Indians, either out of fear of hostile tribes or out of a sort of rude loyalty to the Union leaders, gathered in Kansas. And while the Plains tribes proved a great burden, consuming large quantities of provisions and rendering little or no assistance to the cause they thus espoused, yet the civilized Indians were the efficient means of eventually taking most of Oklahoma from the Confederacy.

112. Northern Oklahoma falls into the Hands of the Confederates. On April 24, 1861, Fort Smith was seized by Arkansas state troops, previous to the secession of the state. This seizure was easily accomplished because the post had been stripped of its garrison by Colonel Emory when he was ordered to proceed to Fort Washita (sect. 105). By the capture of Fort Smith large quantities of supplies and munitions of war fell into the hands of the Confederates. All federal supplies being shipped up the Arkansas River were also confiscated. This gave the Southern forces a material advantage in their operations of which they made good use. The ample equipment obtained by the Confederates in this way explains many of their early successes in the Indian country. Later, when they had used up these supplies and could get no more, the tide turned against them. General Benjamin McCulloch

[1] Rebellion Records, Series I, Vol. VIII, pp. 25–26. The letters to the different chiefs all ask that they come to Kansas. These letters were found in the Creek camp after they had been defeated at Shoal Creek (Chus-te-nah-lah) by General James McIntosh, December 26, 1861 (sect. 116).

used this fort as his permanent base of supplies up to the time of his death at Pea Ridge (sect. 121).

113. Confederates attack the Union Creeks. Up to November 19, 1861, neither side had carried matters so far that war became a reality. But Colonel Douglas H. Cooper, who was in actual command of affairs in the Indian country in the absence of General Albert Pike and General McCulloch, brought matters to a head. In his report to Judah P. Benjamin, Confederate secretary of war, from Fort Gibson under date of January 20, 1862, he avers that "having exhausted every means in my power to procure an interview with (Hopo-eith-le) Yo-ho-la, for the purpose of effecting a peaceful settlement of the difficulties existing between his party and the constituted authorities of the Creek nation, finding that my written overtures . . . were treated with silence, if not contempt, by him, and having received positive evidence that he had been for a considerable length of time in correspondence, if not alliance, with the federal authorities in Kansas, I resolved to advance upon him with the forces under my command." [1]

114. Battle of Round Mountain. Colonel Cooper's forces consisted of the First Choctaw and Chickasaw Mounted Rifles, of which he himself was colonel; the Creek regiment under Colonel D. N. McIntosh; the Creek and Seminole battalion under Lieutenant Colonel Chilly McIntosh (Creek war chief) and Major John Jumper (chief of the Seminoles);

[1] Rebellion Records, Series I, Vol. VIII, p. 5 (Colonel Cooper's report to Benjamin). Colonel, later General, Douglas H. Cooper was a Mississippian who happened to be the Choctaw-Chickasaw Indian agent at the outbreak of the war. He immediately recruited a regiment of Choctaws and Chickasaws and served throughout the war. He died in Indian Territory in 1867.

and a detachment of the Fourth Texas Cavalry under Lieutenant Colonel Quayle.

As Yo-ho-la retreated north Colonel Cooper pushed after him, and just after crossing the Red Fork, late in the afternoon of November 19, 1861, actual bloodshed in the American Civil War began in Oklahoma. The loss was but slight on both sides. Cooper did not push his pursuit, although the Creeks got considerably the worst of the skirmish. Orders had been received by Colonel Cooper to join General McCulloch in Arkansas in order to resist an advance of the federal army under General Fremont.

115. Battle of Bird Creek. But the Northern officer failed to come into Arkansas, and Colonel Cooper was thus left free to continue his attack on the retreating Creeks. These had turned eastward into the Cherokee country on the invitation, according to Colonel Cooper, "of a leading disaffected Cherokee." Yo-ho-la was overtaken at Bird Creek,[1] some twelve or fifteen miles north of Tulsey Town (Tulsa). Cooper had been reënforced by the First Cherokee Mounted Rifles. This regiment had been enlisted by Governor Ross and was composed almost entirely of full bloods.[2] They were opposed to fighting the Creeks, were loyal to Ross, and disposed to favor the North. Before the battle a parley was held with the Union Indians, and when it was found that no adjustment could be made with the Creeks, this Cherokee regiment of full bloods deserted in a body. Some joined Yo-ho-la and others merely abandoned the field. Only twenty-nine of Colonel Drew's twelve hundred men participated in

[1] In Creek it is called Chus-ta-la-sah, which means "caving bank."

[2] They were later known as "Pin Indians," because those who joined the Union forces used a pin as their emblem.

the engagement; but in spite of this defection on the eve of the fight, Colonel Cooper attacked the Creeks (December 9, 1861), who held a strongly fortified position in a horseshoe bend of Bird Creek. After an obstinate fight Yo-ho-la was driven from his position and forced to take refuge in the mountains beyond. The Creek loss must have been considerable, that of the Confederates was fifteen killed and thirty-seven wounded.

116. Battle of Shoal Creek. The Confederates did not dare to pursue the retreating Creeks because of the disposition of the Ross faction to join the North, or at least to refuse to sanction any attack upon their neighbors, the Creeks. In this emergency Colonel James McIntosh, in command of the white troops at Fort Smith, was sent to for aid. He came in person to Fort Gibson and, for the time being, put a damper upon federal sympathies among the Cherokees. McIntosh energetically pushed forward, not waiting for assistance from the somewhat dilatory and demoralized troops of Cooper. On December 26, 1861, he attacked and defeated the Creeks under Yo-ho-la[1] at Shoal Creek (Chus-te-nah-lah). Colonel Stand Watie, commander of a Cherokee regiment composed chiefly of half bloods, was the only officer of Cooper's command who assisted in this final rout of Yo-ho-la. Fleeing Creek and Seminole women and children, of whom there must have been three hundred or more, were taken prisoners. Twenty negroes, thirty wagons, seventy yoke of oxen, and possibly six hundred Indian ponies also fell to the victors. The loyal Creeks were completely demoralized. Their

[1] There was a regiment in Colonel McIntosh's command of peculiar organization, known as the South Kansas-Texas Cavalry, W. P. Lane, lieutenant colonel, commanding. See Rebellion Records, Series I, Vol. VIII, pp. 22–33.

killed is reported by McIntosh to have been two hundred and fifty. This number is possibly somewhat exaggerated. The Confederate loss was nine killed and forty wounded.

117. A Winter of Suffering. The year 1861 ended with the Confederates in complete possession of Indian Territory. Union sentiment was crushed out in the Cherokee nation. Loyal Creeks and Seminoles were driven into Kansas, and so too were the Plains Indians of the Southwest, who, on account of their dislike for the whites of Texas, had joined the North. The suffering of these refugees during the winter of 1861–1862 was terrible. Most of them had abandoned comfortable homes. They had lost their stock and had no other provisions ; they were without shoes, and many lacked clothing. The federal government, occupied with the great struggle upon its hands, completely neglected these loyal sufferers. Sickness followed exposure, and large numbers of these friendly Indians died.

CHAPTER XII

THE BATTLE OF PEA RIDGE AND ITS RESULTS

118. The Battle of Pea Ridge. The year 1862 opened with the South in complete control of the Indian country. But early in the year Generals Curtis and Siegel marched into northwestern Arkansas to fight for this region which had been lost to the North because of its defeat at Wilson Creek (August 10, 1861). They were met at Pea Ridge (March 7 and 8, 1862) by the brilliant Confederate officer Earl Van Dorn, in command of the armies of Generals Price and McCulloch. When Van Dorn learned of the advance of the federal troops, he ordered the concentration of his forces, the Confederate Indians with the rest.

119. The Indians refuse to Move. The treaty made with the Cherokees, as with the other tribes, stipulated that the Indians were not to be compelled to fight outside of the Indian country without their consent. Therefore, when late in February, 1862, General Albert Pike, then in personal command of the Confederate Indians in the Indian country, received orders to join Van Dorn, who was then concentrating all his forces to meet the advancing federal army, the Indians refused to move until they were paid. Pike had been in Richmond the preceding winter and had a large sum of money for distribution among the Indians.[1] "The Choctaws,

[1] "I had in charge a large amount of coin and other moneys for the different Indian tribes, and found delegations of the Osages, Comanches, and Reserve Indians awaiting me." See Pike's report, Rebellion Records, Series I, Vol. VIII, p. 287.

Chickasaws, and Creeks refused to march until they were paid off," Pike recounts in his report of the battle of Pea Ridge; "and as by their treaties with us they could not be taken from the Indian country without their consent, I had no alternative but to submit." But the payment took so long that Pike persuaded what troops he could to march, and hastened forward.

120. Indian Forces at Pea Ridge. So, perforce, Pike hurried toward Arkansas with the one regiment of Creeks, a portion of the First Choctaw and Chickasaw Regiment, and a squadron of Texans. These were all that he could persuade to move. He waited a day (March 2) at Park Hill on the Illinois River for the Choctaw and Chickasaw troops that had previously refused to move. Being disappointed in this, he hurried eastward. At Cincinnati, on the Cherokee line, he came up with the capable Stand Watie and his regiment of Cherokee half bloods, and on March 5 he overtook Colonel Drew, who had recruited a new regiment of Cherokees after the desertion at Bird Creek (sect. 115). Pike's entire command consisted of only one thousand men, all Indians, except the one squadron of Texas cavalry. Late that night General Pike and his Indian brigade fell in with the rear of General McCulloch's division.[1]

121. The First Day at Pea Ridge. The next day, March 7, 1862, began the most desperate battle in which Oklahoma Indians ever participated. Curtis and Siegel, the Union generals, having recovered from the defeat at Wilson's Creek the preceding summer, marched ten thousand five hundred men into northwestern Arkansas to carry the war into the enemy's country. Earl Van Dorn, the ranking Confederate

[1] See Pike's report, Rebellion Records, Series I, Vol. VIII, p. 287.

officer, rapidly concentrated the armies of Price and McCulloch. He assembled an army of 16,202 men, a force more than one half larger than that of the Union army. Never was a battle more fiercely contested. Here the dashing Van Dorn launched a staggering blow at the greatly outnumbered Nationals. A curious feature of the battle was that the Confederates passed completely around the Union west or left flank to Pea Ridge, which is fifteen miles east of Fayetteville. Thus the battle was fought with the federal soldiers facing due north. The Southern left flank was in command of Sterling Price, the famous Missourian. The right flank was under McCulloch, the brilliant Texan. The death of Generals McCulloch and McIntosh [1] and the serious wounding of Colonel Herbert left the Confederate right wing without an efficient officer, and the stubborn valor of General Frantz Siegel completely blocked Van Dorn. The next day (March 8) the battle was renewed on the Confederate left, where Price had commanded so effectually the day before. But with the repulse of the Confederate right on the first day, Van Dorn's plan was spoiled and he was glad to withdraw from the field with his shattered command.

122. General Pike's Report of the Battle. It was on the Confederate right under McCulloch that Pike's one thousand Indians took position. Let me quote General Pike's own account of the battle.

> The enemy opened fire into the woods where we were, the fence in front of us was thrown down, and the Indians (Watie's regiment on foot and Drew's on horseback), with part of Sim's regiment, gallantly led by Lieutenant-Colonel Quayle, charged full in front through the

[1] This was the same James McIntosh who made the brief campaign in the Cherokee country and had effectually defeated Yo-ho-la, the leader of the Union Creeks.

woods and into the open ground with loud yells, routed the cavalry, took the battery, fired upon and pursued the enemy, retreated through the fenced field on our right, and held the battery, which I afterwards had drawn by the Cherokees into the woods. Four of the horses of the battery alone remained on the ground, the others running off with the caissons, and for want of horses and harness we were unable to send the guns to the rear.

This slight success and the death of the commanding generals seem to have completely demoralized Pike and the Indians. General Pike's report continues:

> We remained at the battery for some twenty minutes, when Colonel Watie informed me that another battery was in our front. . . . Colonel Drew's regiment was in the field on our right, and *around the taken battery was a mass of Indians and others in the utmost confusion, all talking, riding this way and that, and listening to no orders from any one.* I directed Captain Roswell W. Lee . . . to have the guns which had been taken, faced to our front, that they might be used against the battery just discovered; but he could not induce a single man to assist in doing so. At this moment the enemy sent shells into the field, and the Indians retreated hurriedly into the woods out of which they had made the charge. Well aware that they could not face shells in the open ground, I directed them to dismount, take their horses to the rear, and each take to a tree, and this was done by both regiments.

123. Pike deserts the Battle Field. Here the Indians' participation in the battle of Pea Ridge ceased. The death of the Confederate officers left to General Pike great responsibilities which he executed miserably. When General Van Dorn ordered the Confederate right wing to concentrate at Elkhorn Tavern, off toward the east, Pike failed to move, was separated from his command, and, according to his own account (Rebellion Records, Vol. VIII, p. 291), two other officers and a half dozen stragglers constituted his entire force as he hurried from the field. He did not know until he arrived at Cincinnati on the Cherokee border whether any of

his regiments that had participated in the battle had escaped. Here he also learned of the safe withdrawal of the wagon train of the Indian brigade. A little later Pike met Douglas H. Cooper, but recently promoted to a generalship, with the laggard Choctaws and Chickasaws, as well as two hundred Creeks under Colonel D. N. McIntosh, who had refused to march a few days before. These troops were too late to be of any assistance to Van Dorn.

124. Indian Losses at Pea Ridge. Pea Ridge was the most bloody and desperate of all the lesser battles of the Civil War, yet General Pike gives the loss in his brigade as but three killed and two wounded. In a battle where opportunities to fight were so abundant, and where the evidences of valor on both sides were so numerous, it appears that Pike and his Indians acquitted themselves but poorly. An Indian's well-known aversion to cannon, when pointed his way, may partially explain this. The Union forces of Curtis had no less than forty-nine guns on the field and in action. These were his chief reliance, and with them he won his battle. It goes without saying that if all the Confederate commands had behaved as did Pike's, the battle of Pea Ridge could never have been termed "bloody." The colonel of the Third Iowa Cavalry, Cyrus Bussey, reported that of the twenty-five men in his regiment who were killed when facing the Indians eight had been scalped, and that the bodies of many others had been mutilated. Affidavits were presented to sustain this charge.[1]

125. Confederates desert Cherokees. The defeat of the Confederates at Pea Ridge was not the least of the Cherokees'

[1] Rebellion Records, Series I, Vol. VIII, p. 207. And it is quite possible that these charges were true, for, as we have seen above (sect. 122), General Pike lost complete control of his troops.

difficulties. On April 15, 1862, General Van Dorn was ordered east of the Mississippi River with his entire army. This stripped Arkansas of efficient troops. The North, however, was slow to take advantage of its opportunity. In April three regiments were organized among the Union Indians, who had starved and frozen all through the preceding winter in Kansas.[1] It was not until June, however, that these troops entered the Territory, and then they came in no considerable numbers.

126. General Pike's Inefficiency. Had General Albert Pike possessed a scintilla of military ability, this was his opportunity. He had a large and fairly well organized Indian army, but instead of remaining at the seat of difficulty and energetically retrieving the misfortunes at Pea Ridge, he withdrew almost all his army to the extreme southern part of the Choctaw nation. Then, when two hundred miles from the seat of war, he began to intrench himself at a place which he named Fort McCulloch, near Armstrong Academy. In vain did Colonel Cooper ask aid; in vain did Pike's department commanders, General Hindman and General Holmes, order him forward. He remained at Fort McCulloch and wrote to every one in authority, complaining because General Van Dorn had seized supplies which he thought should have gone to the Indians. Volume XIII (Series I) of the "Rebellion Records" contains page after page of such letters sent to President Jefferson Davis and to the Confederate

[1] James W. Denver, an ex-governor of Kansas Territory, was assigned to the command of the Union forces in the Indian Territory, and Robert W. Furnas, afterwards governor of Nebraska, was appointed colonel of the First Indian Regiment. But it seems that neither Governor Denver nor Governor Furnas ever took active command in Oklahoma. It is interesting to note that Denver, Colorado, was named for General Denver.

secretary of war. Under date of July 3, 1862, appears an official communication of Pike's to General Hindman, which, if written out in long hand, would make no less than twenty-five pages. In it this brigadier of the Indian country recounts the year's history of the war from his standpoint. He tells of his backache and how hot it is in his tent, says that he is too fat "to ride much on horseback," and wishes some one else would take the command. His idea of discipline was to threaten to fire cannon at his own men if they did not obey promptly.[1] He found time to get a printing press and set about printing what he termed "necessary forms and blanks," but he had no time for fighting, although squads of a few hundred Union soldiers were overrunning the entire Cherokee country. His orders were so absurd that they fully warranted Colonel Cooper on August 7, 1862, in writing General Hindman: "I have ordered the arrest of General Pike. . . . I consider him partially deranged, and a dangerous person to be at liberty among the Indians." A week before this (July 31) Pike had issued a proclamation, addressed to the Cherokees, Creeks, Seminoles, Chickasaws, and Choctaws, saying he had resigned; but some months later he changed his mind, and on October 23, 1862, we find him back from what he now called "leave of absence," and without the least warrant of law or authority he attempted to again assume command in the Indian Territory. This attempt was promptly followed by an order for his arrest. This ended Pike's military career.[2] The Indian alliances, instead of being an aid to the Confederacy, were a drain and

[1] Rebellion Records, Series I, Vol. XIII, pp. 954–962.

[2] General Pike removed to Washington after the war. Here he practiced law until his death in 1891.

a burden. Douglas H. Cooper was made temporary commander in the Indian country, and on October 27, 1862, was also appointed superintendent of Indian affairs.

127. Cherokees declare for the North. While Albert Pike fumed and did nothing, let us see what was going on in northern Oklahoma. The Union forces that had been organized in April in Kansas (sect. 125) came down into the Cherokee country late in June, 1862. They were under the immediate command of Colonel William Weer. Stand Watie, who had been raiding in southwestern Missouri, was pushed south, and all the Indian country north of the Arkansas River was cleared of Confederates by a force that was considerably smaller than the Southern army which General Pike was holding in idleness down on the Red River. But the Union officer, Colonel Weer, was hardly more competent than the Confederate Pike. Weer went into camp on Grand River, fourteen miles north of Fort Gibson, and remained there, almost as idle as his opponent Pike at Fort McCulloch. Finally, he was arrested by one of his subordinates for drunkenness,[1] and the command retreated northward with nothing permanently accomplished.

128. Chief Ross deserts Confederates. Previous to this, however, on July 14, 1862, Major Campbell, an officer under Weer, entered Fort Gibson, and the same day Captain Greno took Tahlequah. Captain Greno's report to Colonel Weer continues: "On the morning of the 15th I moved my command to Park Hill [a town about five miles south of Tahlequah], the residence of John Ross, chief of the Cherokee nation. Here I found about two hundred Cherokee Indians waiting for an opportunity to join the Union

[1] Rebellion Records, Series I, Vol. XIII, p. 484. This was July 18, 1862.

Army." At Ross's house were found a large number of Cherokee officers who had again abandoned Colonel Drew's regiment, among these being Lieutenant Colonel W. P. Ross and Major Thomas Pegg. "Members of Colonel Drew's regiment had received orders from Colonel Cooper to report for duty at once at his headquarters at Fort Davis.[1] These orders had been received but a few hours previous to my arrival. Colonel Ross was hesitating what course to pursue, and to decide the matter for him I made them all prisoners of war and brought them to these headquarters." These leading Cherokees went willingly enough into the Union service, and at this time two hundred other friendly Cherokees accompanied Greno back to the Union camp. Chief John Ross was arrested and then paroled by Captain Greno. Thus he avoided Colonel Cooper's command to call on every Cherokee from the ages of eighteen to thirty-five to take up arms for the Confederates, as the treaty between the Cherokees and the Confederate states stipulated must be done in case of invasion. After the affair at Pea Ridge the federal cause did not seem anywhere near so hopeless as it had in the preceding October, when Ross had signed the act of the Cherokee national council, confirming the treaty of alliance with the southern states. Ross and the eastern Cherokees naturally inclined to the North. They disliked and feared Stand Watie and his brother, E. C. Boudinot, who were nephews of Major Ridge, and old tribal hatreds still lingered. On June 25 Ross pointed out to General Hindman that in the third article of the treaty of alliance with the Confederates

[1] Cantonment Davis, or Fort Davis, was a post named for Jefferson Davis, established by the Confederates opposite Fort Gibson. It was located near Muskogee.

the latter had solemnly promised that the Cherokee nation should never be deserted nor abandoned. Yet at that time it was deserted; Pike and his army were two hundred miles away, and fifteen days later Chief Ross himself was a federal prisoner. Thus Ross, who had an eye to the best interests of the Cherokees and wanted in every way to keep out of the trouble himself and save his tribe from destruction, found that the Cherokees were at the mercy of both factions. The old chief felt that he lacked strength to undergo the turmoil and strife into which he was now thrown, and he shortly after removed to Philadelphia, where he remained until the close of the war.

129. Ross Deposed. On the withdrawal of the Union forces the Confederates reoccupied Tahlequah. They were incensed at the conduct of Ross and his Union followers, who had allowed themselves to be made prisoners after having made an alliance with the Confederates. John Ross was deposed as principal chief and General Stand Watie was put in his place. E. C. Boudinot, a younger brother of the newly elected principal chief, who was reputed a brilliant orator (p. 160, note), was sent to Richmond as the Cherokee delegate of the Confederate congress. From this time to the close of the war both Ross and Stand Watie were recognized by their respective factions as Cherokee head chiefs.

130. Battle of Newtonia. After Colonel Solomon arrested Colonel Weer on the Grand River in July, 1862 (sect. 127), he immediately retreated north. This left the Cherokee country again exposed, and in October Colonel Cooper joined General Rains and made an expedition into Missouri. At Newtonia (September 30, 1862) they defeated the federal troops under Solomon and Weer with considerable loss.

131. Fort Gibson permanently occupied by Union Forces. But this Confederate success only stirred the Union forces to greater activity. Brigadier General James G. Blunt, who had been in command in Kansas since April, 1862, took the field in person. Cooper and Rains separated their forces. Blunt came up with Colonel Cooper at old Fort Wayne early in the morning of October 22 and severely defeated him. Captain Howell lost his entire battery. Cooper retreated as rapidly as possible south of the Arkansas. On November 9 Fort Gibson was retaken by the Union forces under Colonel William A. Phillips. From this time to the close of the war this post was the center of Union activities in the Indian country.

132. The Arkansas River Line. From the time Fort Gibson was occupied until the conclusion of the struggle, the war in Indian Territory consisted of a series of attacks and counter attacks across the Arkansas River. The country north of the river was held by the Union forces, while that south of it was generally counted Confederate dominion. Cooper and Stand Watie would raid north into the Cherokee country; General Blunt and Colonel Phillips would march south from Fort Gibson. Neither side made any permanent gains, but the effect on the Indian country from the countless raids and forays was appalling. The Indian nations were completely devastated.

CHAPTER XIII

FROM 1863 TO THE CLOSE OF THE WAR

133. Cherokees join the Union. A majority of the Cherokee nation was evidently Northern in sentiment. As soon as it became apparent that the Northern army had come to stay, Captain Thomas Pegg, acting principal chief of the Cherokee nation in the absence of Ross (sect. 128), summoned the national council, February 18, 1863. The council repealed its former act of alliance with the Confederacy and returned to its treaty relations with the United States. It also abolished slavery and involuntary servitude in the Cherokee nation.

134. First Battle of Cabin Creek. It is impossible to give in detail the countless minor engagements and skirmishes that took place during the winter and spring of 1863. At Webber Falls, Colonel Phillips, on April 25, 1863, prevented a meeting of the Confederate section of the Cherokee legislature, which Principal Chief Stand Watie had called. General Cooper retaliated, May 20, by attacking Phillips's outposts at Fort Gibson (this post had now been renamed Fort Blunt by the federal forces). On July 1 Colonel J. M. Williams, in command of the First Kansas Colored Infantry and some white troops, was attacked at Cabin Creek by Stand Watie and McIntosh while escorting a long supply train from Fort Scott to Fort Blunt. An excellent spot to attack a wagon train was at the point where the Fort Scott road crossed this creek, and here the Indians assailed the federal forces. The battle lasted two days (July 1 and 2), the Confederates being finally defeated

by the aid of the Union cannon. Neither side suffered any severe loss, and the wagon train proceeded unharassed to Fort Blunt.[1]

135. Battle of Honey Springs. On July 11, 1863, General Blunt arrived at Fort Gibson, or Fort Blunt as the place was called, and made preparations for an active campaign. The superior resources of the North in money, men, and arms now began to tell, and we shall soon find the Confederates pushed back to Red River, although they did not surrender central Oklahoma without many a stubborn engagement. On July 16 General Blunt crossed the Arkansas with three thousand men. His command consisted of three Indian Home Guard regiments, the First Kansas Colored Infantry, battalions of cavalry, and two batteries of artillery. General William Steele had assumed command of the Confederate forces in Indian Territory, September, 1862, but he was not in personal command at this time. General Douglas H. Cooper met Blunt's attack near Honey Springs, a little west of the present city of Muskogee, in the Creek nation, in much the greatest battle ever fought in Oklahoma. General Stand Watie held the Confederate right wing with the First and Second Cherokee regiments; Colonel Thomas C. Bass had three Texas regiments and a battery of artillery with which to hold the center, while Colonel D. N. McIntosh was posted on the left with the First and Second Creek regiments. Colonel Tandy Walker commanded the reserve of cavalry and the First Choctaw and Chickasaw Regiment. This force was expected to guard the supplies at Honey Springs. The Confederates considerably outnumbered the Union forces, but because of inferior powder they were at a great disadvantage. Blunt struck

[1] Rebellion Records, Series I, Vol. XXII, pp. 378–382.

the Confederate line the morning of July 17, on Elk Creek, some three miles from Honey Springs. General Cooper in his report[1] states that the morning was cloudy and damp, and many of the guns failed to act in consequence of the inferior quality of powder, which rendered them wholly useless. The Confederates after a spirited resistance retreated. Cooper burned his supplies at Honey Springs before he abandoned the place. General Blunt pursued the retreating Confederates for about three miles, when, on account of the exhausted condition of his men and horses, he called a halt. The Union losses were thirteen killed and sixty-two wounded; the Confederate losses were one hundred and fifty killed, four hundred wounded, and seventy-seven prisoners. The Confederates also lost a considerable quantity of arms, camp equipage, etc.

136. Blunt again attacks the Confederates. In August the Federals again crossed the Arkansas and began a general movement southward against General Steele, whose forces were concentrated south of the South Canadian. Steele retreated rapidly on Blunt's approach, General W. L. Cabell going east, the Creeks under Colonel D. N. McIntosh going west, while Cooper and Stand Watie retreated southward toward Red River. On August 25 Blunt struck the Confederates in the northern part of what is now Pittsburg County, at a small town called Perryville. The Confederates resisted with spirit, but their powder was poor and they were forced from the field. Blunt burned the Confederate supplies at Perryville and then quickly turned a portion of his command to the east and hotly pursued Cabell.

137. Fort Smith Captured. General Cabell retreated as best he could, but because of desertions he was unable to make

[1] Rebellion Records, Series I, Vol. XXII, p. 458.

any successful resistance. On September 1, the same day that General Blunt occupied Fort Smith, he was defeated by Colonel Cloud. This was the crowning disaster in the Indian country for the Confederates in the year 1863. The capture of this post gave the Union army control of all the upper Arkansas River. Dissatisfaction with General Steele[1] was now so strong that on December 11, 1863, he was removed and General Samuel B. Maxey placed in command of the "military district" of the Indian Territory.

138. Quantrill in Oklahoma. Fort Smith fell in September. Early the next month General James G. Blunt, the Union commander of the army of the frontier, determined to move his headquarters from Fort Scott to Fort Smith. He was on his way October 6, 1863, and stopped for dinner close to Baxter Springs, on the Cherokee line, just north of what is now Ottawa County, Oklahoma. About four hundred yards from Fort Baxter General Blunt halted his little command, which consisted of unarmed clerks and musicians, and a mounted guard of one hundred. On October 2, 1863, W. C. Quantrill, the noted Missouri raider and guerrilla, had left Carthage, Missouri, to join General Cooper's forces on the Canadian. It happened that Quantrill struck the Union forces at Fort Baxter just at the moment that General Blunt halted for dinner. Because of Blunt's lack of caution in not proceeding on to Fort Baxter, Quantrill got his men between those of Blunt and the soldiers in the fort under Lieutenant James

[1] General William Steele was from the North, being born in New York in 1840. He joined the Confederates at the commencement of the war. But he was never fully trusted by them, and it was frequently charged that he was a brother of General Frederick Steele, the Northern general in command in Arkansas. This was not true, but it destroyed the Confederate officer's usefulness.

B. Pound. The combined Union force consisted of but three hundred men, yet had they been in the fort they would have been sufficient to withstand the attack of the six hundred and fifty Confederates. As it was, Lieutenant Pound succeeded in holding his trenches, while General Blunt was badly defeated. The Union loss was ninety-eight killed and wounded. Major H. Z. Curtis, a son of the famous Union general who commanded at the battle of Pea Ridge (sect. 121), was among the slain. Quantrill's loss was but three killed and three wounded. The eighty federals killed in this engagement was one of the largest losses suffered by the North in Indian Territory. The charge was made time and again that Quantrill murdered all the prisoners he captured, including the unarmed clerks and musicians, for they were all shot in the head. The report of this officer to General Price would lead one to believe the charge true. In this he significantly remarks: "From this place [Fort Baxter] to the Canadian River we caught about one hundred and fifty Federal Indians and negroes in the Nation gathering ponies. *We brought none of them through.*"[1] For the rest of the war Quantrill served in Oklahoma and Texas.

139. Confederate Indians Suffer. After the fall of Fort Smith the Indians who sympathized with the Confederates were all forced out of the northern and central parts of Oklahoma. They now took refuge on Red River and, like the Union Indians who fled to Kansas in 1861, spent a miserable winter. To make matters worse for them, Colonel W. A. Phillips, the energetic Union officer, now planned a

[1] Rebellion Records, Series I, Vol. XXII, p. 701, Quantrill's report to General Price; also see reports of General Blunt, Lieutenant Pound, and others.

winter campaign. In February, 1864, he struck south into the Choctaw and Creek country. He also sent expeditions into the Seminole and Chickasaw nations. Large quantities of supplies were destroyed and an immense wagon train of provisions and cattle was brought back to Fort Gibson. Colonel Phillips, in command of a battalion of cavalry, penetrated almost to Fort Washita on this excursion. When in this part of the Territory Colonel Phillips addressed letters to Governor Colbert of the Chickasaws, to Chief John Jumper of the Seminoles, and to the Choctaw national council. In these letters he pointed out the uselessness of continuing the struggle further and called their attention to President Lincoln's proclamation "in which he offers pardon and peace."[1] If one can accept the report of the Northern colonel, he devastated a path through the country eighty miles wide. Few Indians accepted his offer.

140. Tonkawa Massacre. A year previous to this (October 23, 1862) the Tonkawas, one of the few Plains tribes that sided with the South, was set upon at the Anadarko agency by a contingent of loyal Delawares, Creeks, Shawnees, and Kickapoos. The Tonkawas were almost annihilated.[2] Twenty-four warriors and one hundred women and children were killed. The others fled to Texas and remained there until long after the war (1884). Finally, when they consented to come back to Oklahoma, they were settled in the Cherokee Strip instead of at their old home near Anadarko, where they had so many enemies (sect. 154).

141. The Last Year of the War. The year 1864 ended the war so far as the Indian Territory was concerned. The

[1] Rebellion Records, Series I, Vol. XXXIV, pp. 106–113.

[2] Ibid., Vol. XIII, p. 919; also Vol. CXXVIII, p. 355. Less than one hundred women and children and about forty warriors escaped.

federal authorities did not think the Indian country of enough importance to send a strong force into it, and the year's fighting consisted of numerous unimportant attacks and counter attacks across the Arkansas River line.

142. Poison Springs. The long series of reverses of the Confederacy previous to the coming of peace was suddenly turned into a brilliant success by the defeat of Banks's Red River expedition. Banks began his march up the Red River valley in March, 1864. General Frederick Steele, a Union officer, proceeded south from Little Rock to Camden to join Banks later on. The defeat of the Red River expedition allowed the Confederates to concentrate a large force against Steele. The Union forces, hard pressed for food, sent out Colonel J. M. Williams, commander of the First Kansas Colored Infantry, with a wagon train of one hundred and ninety-eight wagons to forage for provisions. The Confederate general, J. S. Marmaduke, learned of this, and on April 17, 1864, attacked the Union wagon train with an overwhelming force, although Colonel Williams had been strengthened by the Eighteenth Iowa Infantry. It happened that General S. B. Maxey, the Indian Territory officer, was present, and as he outranked General Marmaduke he commanded in the engagement, which was known as that of Poison Springs. General Cabell was also in the action. The First Choctaw and Chickasaw Regiment, which had moved into Arkansas of its own free will (according to the treaty with the Confederate government Indians could not be taken out of Indian Territory), now had an opportunity to square accounts with the troops that had defeated them at Honey Springs the year before (sect. 135). The negro regiment suffered terribly, one hundred and seventeen of the four

hundred and thirty-eight men being killed and sixty-five wounded. The Union forces lost their entire train and four cannon, and three hundred and one men were either killed or wounded. The Confederate loss was but thirty-four killed and one hundred and eighty-three wounded.[1] This could not stem the current of misfortunes of the lost cause, but it was a brilliant stroke, and the Choctaw and Chickasaw regiment as well as the Indian Territory officers, Maxey and Cabell, deserve not a little credit for thus stopping the advance into Arkansas.

143. Stand Watie captures Federal Supplies. When General John M. Thayer, who had succeeded General Blunt in command of Fort Smith, marched south to assist General Steele at Camden, the Union forces at Fort Smith and Fort Gibson were much weakened. At once the Confederates in the vicinity of these posts became active. On June 15, 1864, Stand Watie captured the federal supply steamer *J. R. Williams*. General Stand Watie in his report of the affair states that "with the boat was captured one hundred and fifty barrels of flour, sixteen thousand pounds of bacon, and a considerable quantity of store goods, which was very acceptable to the boys, but has turned out to be a disadvantage to the command, as the greater portions of the Creeks and Seminoles immediately broke off to carry their booty home. I am left here with only a few men."[2] To save his cannon General Stand Watie had to burn the supplies and retreat rapidly.

144. Second Battle of Cabin Creek. The most important engagement of the year that was actually fought in Oklahoma was the second battle of Cabin Creek. The Confederates

[1] Rebellion Records, Series I, Vol. XXXIV, pp. 746–825.
[2] Ibid., Part I, p. 1012.

under Generals R. M. Gano and Stand Watie with almost two thousand men slipped around the Union forces at Fort Gibson. The Arkansas River was crossed above this post, and by a rapid march a large federal hay camp was surprised and burned. At the same time a valuable supply train encamped at Cabin Creek near by was attacked by the light of the burning hay. The next day, September 16, 1864, the escort of six hundred men was defeated, and the Confederates captured almost the entire train, which consisted of three hundred wagons, all loaded with valuable supplies that were being sent from Fort Scott to Fort Smith. The Union escort was pushed back, and the Confederates escaped with one hundred and twenty-nine wagons and thirteen hundred horses and mules. What provisions they could not carry away were burned. The clothing and provisions captured here proved a veritable godsend to the destitute Confederates.

145. Peace. The fight at Poison Springs was the last battle of any proportions in which the Indians participated. The winter of 1864–1865 was devoid of military incidents in Oklahoma. The Territory had been so thoroughly devastated during the war that the only portion of it south of the Arkansas still habitable was in the immediate vicinity of Red River, and here the Confederates remained. News of the surrender of General Robert E. Lee, which occurred April 9, 1865, reached the Territory about a week later. General Kirby Smith, the Confederate commander west of the Mississippi, did not surrender until May 26, but almost a month before that (May 1, 1865) a peace council had been called by the Confederate Indians to meet at Council Grove on the North Canadian. It did not assemble, however, until May 26, and then it met at Camp Napoleon on the Washita.

The idea was for all the Indians of the Southwest to form a league and to stand together in insisting on their rights, and in no case was one tribe to war upon another. With the surrender of Kirby Smith the Confederate power in the West was completely broken. It was now all important that these Indian nations adjust the difficulties in which they found themselves because of relations with warring states. But this has to do with the chapter on Reconstruction. The Civil War was over.

CHAPTER XIV

RECONSTRUCTION AND REORGANIZATION

146. Condition of the Five Nations. The progress and industry that Schoolcraft everywhere noted in Indian Territory in 1857 had all gone for nothing. The country from the Kansas line to the Red River was completely devastated. Homes had been burned, fields destroyed, cattle seized.[1] When the Union troops raided the South they destroyed the property of Confederate sympathizers. When Confederates went North they retaliated. Bitter tribal hatreds that had all but died out were rekindled in the Cherokee and Creek nations. The Indians lost their slaves, and friendly and hostile Indians alike were told that because the governments of the Five Tribes had sided with the South, they had likewise

[1] In a letter to Major General Maxey, under date of December 29, 1864, Principal Chief P. P. Pitchlynn of the Choctaw nation draws a vivid picture of the suffering of the Confederate Indians. "The information, which reaches me from every country and almost every neighborhood in this Nation, representing a state of destitution and suffering unprecedented in our history, induces me to address you. . . . In consequence of a large number of producers being engaged as soldiers, and also the drought which prevailed last summer, very little corn was made in the uplands. This scarcity has caused all classes to look to the few farms of slaveholders on Red river as the only hope of subsistence until another crop can be produced. This source is not enough to meet the pressing necessities of the refugees and the families of soldiers. The soldiers, who have been in defense of the country, demand as a right that their families shall not suffer for bread. . . . Soldiers, regular and irregular, are constantly traversing the highways and byways of the Nation, taking by force or threats of violence the little that is to be found in the sections most destitute. There is an increasing spirit of dissatisfaction in consequence of the wanton waste and willful destruction of private property by the soldiery" (Rebellion Records, Vol. LIII, p. 1035).

forfeited their treaty rights. Thus the Indians, although the Civil War was in no way theirs, suffered by it as much as those who had actively fomented it.

147. Peace Council at Fort Smith. It was natural that Peter P. Pitchlynn, never a bitter partisan, should take the first steps for a permanent peace. As governor of the Choctaw nation, he called a general peace council of all tribes of Indian Territory to meet at Armstrong Academy, September 1, 1865. The Indians wished to meet commissioners of the United States and renew the treaties abrogated at the outbreak of the war. Already it was hinted that the federal authorities meant to insist that the rebellion of the Civilized Tribes had caused these treaties to lapse, and that if new treaties were made, they would be in such form as to suit the United States government and not the Indians. Naturally the Indians were anxious to learn the terms on which they could resume their relations with the federal authorities. The council met at Fort Smith, September 8, instead of at Armstrong Academy. A great multitude of chiefs, warriors, sachems, headmen, women, and children were assembled at Fort Smith on the appointed day. Milton W. Reynolds, a noted correspondent, has left us a vivid picture of that council.[1] It was a most notable gathering. "On the part of the government such distinguished statesmen and generals as W. T. Sherman, General Parker, Governor Stanley of Minnesota, Senator Henderson of Missouri, and Judge D. N. Cooley, Commissioner of Indian Affairs, acted as commissioners. The representatives of the Indian tribes were no

[1] Rock, Marion Tuttle, Illustrated History of Oklahoma (Topeka, Kansas, 1890), pp. 8–9. At the time Mr. Reynolds wrote the article for Rock's history he lived at Edmond. He died there in 1890, just after being elected to the first territorial legislature.

less conspicuous and brilliant. . . . Their great leaders, John Ross and Colonel Pitchlynn, were still living, and were active participants in the grand council. . . . Colonel E. C. Boudinot was then a comparatively young man, the most gifted and powerful in eloquence of all the Cherokees. Just out of the Confederate Congress at Richmond, as delegate from the Cherokees [sect. 129], . . . he was a pronounced figure in the convention, and though difficult to restrain, he gradually became conservative, and his ancient loyalty to the government was restored."

148. Terms offered the Indians. The commissioners were charged with making known to all the tribes of the Southwest the policy of the government toward them. The Indians were told that peace had been proclaimed, that the work of reconstruction was now being carried on between the North and South, and that the former relations of the semicivilized tribes with the government must be restored. The general terms were these :

1. Since the tribes had gone into rebellion, they had forfeited all treaty rights, and all the property once owned by them was now under the ban of confiscation. The government, however, was not disposed to deprive them of a home.

2. Their slaves must be declared freedmen and have the same rights as themselves if they chose to remain members of the tribe.

3. Their large reservations must be curtailed so that the freedmen and loyal Indians from the North might have homes among them.

4. The policy of the government to unite all the Indian tribes into one consolidated government must be accepted.

These conditions were a hard blow to the Indians, but they were helpless. Not only must they divide up their lands with their ex-slaves, but other tribes of Indians must be given homes. Prominent men from Kansas were present at Fort Smith and insisted strenuously upon this provision. Kansas was plastered all over with Indian reservations, and wanted to get rid of the Indians who owned all of her western plains and much of her choicest land in the southern portion of the state. Now was her opportunity, and she did not propose to let it slip. The Indians protested loudly. So many tribes were represented, and there were so many conflicting interests, that nothing definite was done at Fort Smith; but an agreement was made to meet in Washington the next year (1866) and there ratify separate treaties with each tribe, in accordance with the above stipulations.

149. The Treaties at Washington. According to agreement, the Indians met the next year at Washington to ratify treaties with the government. The conditions as set forth in the preceding section were put into definite form, but the articles differed slightly for each tribe. It took months to negotiate all these treaties. The Seminole treaty was signed in March, while that of the Cherokees was not agreed to until July 9, 1866. Each of these agreements set forth in express terms:

1. That amnesty was declared and peace must rule between all Indian tribes.

2. That slavery must be abolished.

3. That freedmen must be received into the tribes just as if they were Indians, except that they were not to share in the annuities. The right to vote at all tribal elections was given to all the ex-slaves, and also to the free negroes who

lived in any of the Five Nations at the time the Fort Smith treaty was made.

4. That loyal Indians were to receive pay for losses sustained during the war.

5. That each tribe must agree to grant right of way to railroads desiring to build across the Indian Territory.

6. That a detailed form of territorial government uniting all the tribes was expressly accepted.

7. That each of the Five Civilized Tribes had to surrender its western lands.

150. Lands surrendered by the Five Tribes. The Seminoles gave up all their lands, for which the government gave them fifteen cents an acre. The government also agreed to get for them two hundred thousand acres of the land located between the two Canadians, which the Creeks had to surrender. For this they had to pay fifty cents an acre (map, p. 137). The Choctaws and Chickasaws made their treaty together, because they held their land in common. They had to give up all their domain west of the 98th meridian,[1] — the region known as the "leased district," which the federal government had previously rented from these tribes (sect. 78). The United States government was to give these two tribes three hundred thousand dollars for this vast area, which includes all of southwestern Oklahoma, known as the Kiowa-Comanche-Caddo country. One fourth of this was to go to the Chickasaws and three fourths to the Choctaws, on condition that they took care of their negroes, as stipulated

[1] The Chickasaw National Council never ratified their treaty, while the other four Indian legislatures did. Years afterwards the Chickasaws sued the federal government in the court of claims and got money damages for the land they had been compelled to give their ex-slaves, but the suit for damages for the "leased district" as yet has never been settled.

in the treaty, within two years. If they did not, the entire sum was to be used by the United States in removing the freedmen and founding a home for them elsewhere. The Creeks surrendered the western half of their dominion. The government was to survey the division line and pay the Creeks thirty cents per acre for the ceded lands. As in the other treaties, it was stipulated that these lands were receded "to locate other Indians and freedmen thereon." A portion of this region so receded was never given to any tribe (see map, p. 179), but remained vacant. It was this land that David L. Payne and his Oklahoma boomers insisted should be opened to settlement (sects. 186–187). The Cherokees were dealt with more leniently, probably because Union sentiment was much stronger among them. The United States could settle civilized tribes east of the 96th meridian, that is, in the Cherokee nation proper, on agreement with the tribe. West of the 96th meridian in the Cherokee Outlet wild tribes could be settled, but the lands thus taken were to be paid for at a price to be determined later. Thus it will be seen that the Cherokees did not lose all their western country at this time, and it had to be purchased later, previous to the Cherokee Strip opening (sect. 201).

151. How the Tribes settled with their Ex-Slaves. All the Civilized Tribes held slaves at the time of their migration west. The Seminoles had long married with the runaway negroes who came among them, and it is difficult to say that slavery as it was known in America existed among them. But in the other tribes slavery was well established. "In 1836 Albert Gallatin stated that the number of plows in the Five Tribes answered for the number of able-bodied negroes."[1]

[1] Extra Census Bulletin, "The Five Civilized Tribes" (1894), p. 7.

While this negro population was not large, yet it was the chief agricultural force in all the tribes. We have noted (sect. 149) that each tribe had to agree to make suitable provision for its ex-slaves. In all the tribes those freedmen and the negroes residing in any of the Five Nations at the time the treaty of Fort Smith was ratified were to have exactly the same privileges in the Indian governments as the Indians themselves. They were to be allowed to vote and hold office and were to be assigned lands. In the Seminole and Creek tribes since the Indians had largely intermarried with the negroes, and this stipulation was willingly accepted; but in the Cherokee, Choctaw, and Chickasaw nations it was bitterly resented. We find no slave census previous to the Civil War, but there were approximately fifteen hundred Cherokee slaves,[1] four thousand Creek, two thousand Choctaw, and one hundred and twenty-nine Chickasaw. In the Seminole nation slave and master lived on such terms of equality that slavery can hardly be said to have existed there. Because of long delays there were thousands of descendants of these ex-slaves to go on the tribal rolls when they were finally made up. According to the Report of the Commissioner of the Five Civilized Tribes for the year ending June 30, 1908 (p. 37), the rolls when finally made up contained 5994 Choctaw freedmen, 4670 Chickasaw, 4924 Cherokee, 6807 Creek, and 984 Seminole ex-slaves or descendants of ex-slaves. Thus the longer the allotment of land was put off, the more negroes there were to receive lands. The freedmen in each tribe did not receive the same amount of land. This

[1] These negroes were declared free by the Union faction of the Cherokees, February, 1863. I get the above figures from Beadle, J. H., The Undeveloped West, pp. 424-425. The census for 1890 gives the number of Chickasaw negroes as but one hundred and twenty-nine.

was because the areas and the number of citizens in the respective nations differed. In the Choctaw and Chickasaw treaty it was expressly provided that the freedmen should receive forty acres each. The Seminole negroes were given one hundred and twenty acres, and the Creek ex-slaves and their descendants each received one hundred and sixty acres, while those in the Cherokee nation were allotted one hundred and ten acres apiece.

152. Removal of Minor Tribes to Oklahoma. Probably the provision that was of most importance to the Indians at the time the Washington treaties of 1866 were made, was the stipulation for the settlement of other Indian tribes in the Five Nations. When the treaties were signed it was expected that large numbers of other Indian tribes would be actually enrolled among the Civilized Tribes. But there was so much objection to sharing their lands and tribal funds with outsiders that this was not done except in the case of the Delawares. Kansas and Nebraska were so anxious to get rid of their Indian population that no time was lost in making removal treaties. In 1866 the Delawares and some of the Shawnees sold all their lands in Kansas to the Missouri River Railroad Company and moved to the Cherokee country, where they became a part of the nation, having all the rights and privileges of Cherokees. A few of the Delawares had been adopted by the western Cherokees previous to 1820. Another portion of this tribe in 1828, under the leadership of Black Beaver,[1] had refused to settle in Kansas, and had gone to the Wichita country and established homes near Anadarko. They had been driven out of here by the

[1] Black Beaver was Marcy's chief scout on his Red River expedition (sect. 26).

Confederate Indians in 1861, but Black Beaver returned after the war. About one hundred of the Delawares preferred not to settle in the Cherokee country, and joined Black Beaver and his friends at the Wichita agency. It is worth noting that Black Beaver was one of the most shrewd and reliable scouts that ever served the government during the war, and that the Delawares sent to the Union army one hundred and seventy out of their two hundred and one able-bodied men.[1] During the next few years a large number of tribes were located in Oklahoma. We cannot here give the details of the removal of each of these Indian clans to our own state. By the use of the map (p. 137) you can learn where these tribes were located.

153. Tribes in Northeastern Oklahoma. By the treaty of February 23, 1867, the Quapaws surrendered a little strip of land which they owned in Kansas, and moved to Oklahoma. The confederated Peorias, Kas-kas-ki-as, Weas, Pi-an-ke-shaws, and Miamis were given a small reservation just south and west of them. South of these confederated tribes the Ottawas were located, and the eastern Shawnees retained a small part of the land they had previously owned jointly with the Senecas. The Wyandottes were given another strip of the old Seneca reservation, and finally the Kansas and Oklahoma Senecas were joined in the most southern of these little reservations. Much later, in 1874, the Modocs,[2]

[1] Extra Census Bulletin, "Five Civilized Tribes" (Washington, 1894), p. 44.

[2] In 1872 some hostile Modocs retreated to the lava beds of Oregon, where for almost a year they defied the troops sent against them. A conference held April 11, 1873, was broken up by the Modocs attacking the commissioners, killing General Canby and others sent to treat with them. The Indians were finally captured, and their leaders, Captain Jack and three others, were hanged. One hundred and forty-eight of this band were then transported to Oklahoma, where they still reside.

after their defeat in the Modoc War, were settled in the northeastern corner of the eastern Shawnee reservation. All these tribes live in what is now Ottawa County. Their land has been allotted, and all but the Modocs have become citizens of Oklahoma as well as of the United States.

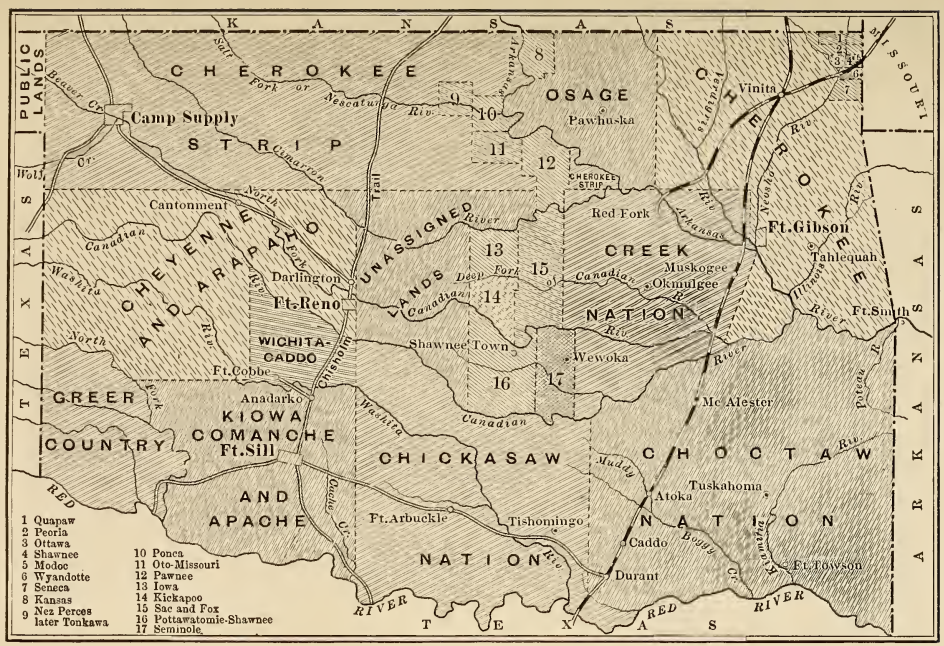
154. Tribes located in the Cherokee Strip. Some Osages had resided in northeastern Oklahoma from the time Clermont's band had settled there, possibly in 1802 (sect. 17). But after leaving Missouri the greater portion of the tribe was domiciled in Kansas (see map from Schoolcraft, p. 74). In 1870 this portion of the Osages ceded its Kansas lands and took a reservation in the Cherokee Strip east of the Arkansas River and west of the 96th meridian. This tribe was the last to take its lands in severalty, the allotments being made in 1909. The Osages have managed their business affairs shrewdly and are reputed to be the richest community in the world. Each man, woman, and child in the tribe, it is estimated, owns property worth approximately $40,000. In 1873 the Kaws purchased a reservation in Oklahoma from their kindred, the Osages. The tribe had decreased from thirteen hundred in 1850 to but five hundred and ninety-three in 1872, just before they moved to Oklahoma.[1] The Nez Percés in 1878, under the leadership of Chief Joseph, waged a remarkable campaign against the United States forces under Generals Howard, Crook, and Miles. The Nez Percés finally surrendered at Bear Paw Mountain and were taken prisoners of war, first to Fort Leavenworth and then to the Nez Percés reservation in the Cherokee Outlet. The tribe by this time had dwindled to but four hundred and

[1] The Kaws are one of the less progressive tribes, yet one of the United States senators from Kansas, Charles Curtis, is a member of this tribe.

ten members, counting women and children. The Indians pined for their mountain home, and in 1883 a few of them were transported to a new reservation in Idaho and Washington. Two years later (1885) the rest of the tribe was allowed to return. The Ponca Sioux were given a reservation in what is now part of Kay and Noble counties on the Arkansas River. In 1876 the Poncas came from the Dakota-Nebraska boundary to live in the northeastern portion of the Cherokee country. They were annoyed by whisky sellers, intruders, and horse thieves, and in 1878 President Hayes allowed them to settle on a reservation southeast of the Nez Percés. The Tonkawas, we remember, during the Civil War (October 25, 1862) were set upon near Anadarko and half their number massacred (sect. 140). They then fled to their old homes in Texas. In 1884 they were allowed to settle on the reservation in the Cherokee Strip abandoned by the Nez Percés the preceding year. The Otoes and Missouris came to Oklahoma (Noble County) from southeastern Nebraska in 1882. The same year that the Poncas came to Oklahoma (1876) was also that of the migration of the Pawnees of the Platte.[1] They came from central Nebraska to lands that are now located in Pawnee County. About three thousand moved to Oklahoma at that time. These tribes, it will be observed, were all located in the Cherokee Strip (see map, p. 137).

155. Minor Tribes located in Central Oklahoma. In 1867 the Sacs and Foxes signed a treaty to move from Kansas to Indian Territory. They were located south of the Pawnees, upon land receded by the Creeks. They were the famous

[1] This tribe is in no way related to the Pawnee Picts, who are now always called the Wichitas.



Indian Territory in 1880

tribe of Black Hawk and his successor, old Keokuk, who signed the treaty of removal. In 1876 the Iowas were moved from northeastern Kansas to a reservation west of the Sacs and Foxes and north of the Kickapoos. In 1872 they numbered two hundred and twenty-five.

The Kickapoos were located west of the Sacs and Foxes in in 1873. This tribe was originally from Wisconsin. From there it went to the Wabash, was later forced into Illinois, then into Missouri, and from Missouri into Kansas. A majority of the tribe became disgusted and refused to remain on the reservation. They ranged as far south as Mexico and made no end of trouble by their looting and plundering. The Kansas Kickapoos finally took their lands in severalty and became citizens of that state, but the Mexican Kickapoos caused much trouble by raiding across the border. In 1873 between three and four hundred of the Mexican Kickapoos were induced to return to the United States and were given lands in what are now parts of Lincoln, Logan, and Oklahoma counties. Since the allotment of their lands in 1895 most of them have disposed of their claims and returned to Mexico.

The Shawnees became permanently separated in 1825, when one of the bands refused to settle in Kansas on a reservation and went to Texas, wandering about upon the plains as they pleased. These Indians have ever since been known as the Absentee Shawnees. They later settled in the Creek nation and accumulated some wealth, which the Civil War swept away, and they fled to Kansas. In 1866 they were given a reservation west of the Seminole nation. Two years later they were joined by the Citizen Pottawatomies, a tribe which had sold its surplus land in Kansas and had accepted

allotments, becoming Kansas citizens. This is why they were termed " Citizen " Pottawatomies. They were not sufficiently advanced, however, for citizenship at the time it was given to them, and therefore were glad to dispose of their Kansas allotments and again become reservation Indians in Oklahoma. It is interesting to note that Tecumseh, probably the greatest Indian that ever lived, was a Shawnee.[1]

[1] The Shawnees of Ottawa County were a small branch of the tribe that had long been confederated with the Senecas. The Black Bob Shawnees, so called because of their chief of that name, eventually took allotments and became citizens of Kansas.

CHAPTER XV

RESISTANCE OF PLAINS INDIANS

156. Plains Indians refuse to remain on Reservations. Most of the tribes that settled in the eastern or central portion of the Territory came not of their own free will, but because they were forced to move. These Indians, except the Seminoles (sect. 65), were too civilized to think of waging war against the United States government; but the Plains Indians, ignorant children of the prairie, in no way realized the mighty forces that could be brought against them, and, refusing to submit to authority, heedlessly plunged into war.

157. Civil War chiefly Responsible for This. The Civil War was chiefly responsible for this condition of affairs. At the beginning of the war the regular army was withdrawn not only from Oklahoma (sect. 105), but from Kansas and all the trans-Missouri country. This removed the natural guardians of the wild tribes of this region. We have seen that early in the war the Union Indians of southwestern Oklahoma were driven into Kansas (sect. 117), and that later the Tonkawas, a Confederate tribe, were assailed and forced to flee to Texas (sect. 140). There was tumult and confusion everywhere. This disturbed condition of affairs gave all the Indians who dwelt along the eastern slope of the Rocky Mountains, from Canada to Mexico, opportunity to do as they pleased. The titanic struggle that was going on for the preservation of the republic left little time to deal with predatory bands of Indians.

158. Plains Indians not all Bad. Thus while it was true that certain bands of Indians, following their natural instinct, began to attack immigrants and settlers, yet it is now well established that no considerable number of any tribe engaged in such raids. It is also well established that vicious white men, when the army was gone, attacked, robbed, and often killed small parties of Indians, for the frontiersmen of 1860 and 1865 could see little good in any Indian. The Indians, to retaliate, would waylay whites whenever they could find them, never taking pains to find out whether or not the white men they attacked were the same ones who had injured them. Such a state of affairs could not but lead to "Indian outrages" from the Dakotas to Texas. But the greatest outrage was not committed by Indians.

159. Sand Creek. "In June, 1864, Governor Evans, of Colorado, sent out a circular to the Indians of the Plains, inviting all friendly Indians to come into the neighborhood of the forts, and be protected by the United States troops."[1] The friendly Arapahoes and Cheyennes were told to go to Fort Lyon, Colorado, where they would be given provisions and a place of safety. Accordingly Black Kettle's band of Cheyennes, several hundred in number, settled down at Fort Lyon, where they lived on the best of terms with the soldiers and white settlers in that vicinity. Later they were told to remove to Sand Creek, about forty miles from the fort, where they were still guaranteed "perfect safety." At daybreak of November 27, 1864, Colonel J. M. Chivington, in command of the First Colorado Volunteer Cavalry and a detachment of regulars, attacked the Indian camp without warning and without provocation. The United States flag

[1] Jackson, Helen Hunt, A Century of Dishonor, p. 343.

was floating over the lodge of Black Kettle. As the soldiers advanced, White Antelope, always known as a friendly Indian, came running toward them, holding up his hands and crying "Stop! stop!" in English. When he saw that it was no mistake, but a deliberate attack, he folded his arms and waited until he was shot down. The Indians had been compelled to surrender all their weapons when at Fort Lyon, and now they were ruthlessly murdered. Women and children were killed and scalped, babies were shot at their mothers' breasts, and offenses almost impossible to believe were committed against these unhappy people. These facts were later sworn to before an investigating committee of Congress. It is more than probable that some of the Cheyennes who received supplies at Fort Lyon did slip away and raid trains on the Platte River road, but how this could justify the bloody business at Sand Creek was never explained by Colonel Chivington or his supporters.

160. Little Arkansas Treaties. Even the Sand Creek massacre did not make all of Black Kettle's band hostile. The next year, October 14, 1865, at the mouth of the Little Arkansas, near the present site of Wichita, Kansas, the Cheyennes and Arapahoes made a treaty, agreeing to move to a reservation as soon as it was possible. In this treaty the federal commissioners in express terms denounced the Sand Creek outrage and made what amends they could to Black Kettle.[1] At the same place four days later the Kiowas and Comanches agreed to move to an Oklahoma reservation when so directed by the President. The Apaches of the Plains were, at this time, allowed to abandon their alliance with the Kiowas and Comanches and join the Cheyennes

[1] He and other Cheyennes were given extra land.

and Arapahoes, but the next year at the Medicine Lodge treaty they again joined the Kiowa-Comanche league.

161. Medicine Lodge Treaties. But the frontier, despite treaties and a large force of regulars, failed to become quiet. Indians kidnaped white women and children and attacked isolated settlers or movers. This was almost always done by small parties of young braves, but it is certain that the older chiefs protected these young men in their forays and refused to give them up when demanded. At Medicine Lodge Creek, seventy miles south of Fort Larned in Kansas, a great council of all the Plains Indians was held in October, 1867, in order to induce these Indians to cease their depredations. Milton W. Reynolds (sect. 198) has brilliantly described this meeting:

> It was a great council on the part of the Indians. At first they were sullen and morose and not disposed to treat; they were hungry and mad. They were filled, and, after feasting, they became better natured. It was at this council that I heard Satanta [sect. 171], in the presence of General Sherman, boast of the men he had killed and the horses he had stolen "up at Larned." He rode a big black horse branded "U. S." Satanta was a fiery speaker, vehement, impetuous, tumultuous as a torrent, generally believed to be a common liar and a most consummate scoundrel. Kicking Bird was the second chief of the Kiowas and afterwards became principal chief. He was a good Indian. I slept in the same tent with him. He once saved my life.[1]

Besides General Sherman, many other high army officers were present, among them Generals Sheridan, Hancock, Harney, Terry, and Augur. After the Indians had been fed, and after much insolence had been submitted to from

[1] Reynolds after this always used "Kicking Bird" for his nom de plume or pen name. Quoted in Thoburn and Holcomb's History of Oklahoma, p. 113.

unruly Indians like Satanta,[1] treaties were finally signed by the Cheyennes and Arapahoes, the Kiowas and Comanches, and the Apaches of the Plains (sect. 167). Definite reservations were assigned them in western Oklahoma.[2]

162. The Solomon River Raid. The Indians were always in favor of peace during the winter. They would then come into some fort, draw rations, and be "good Injuns." But when grass began to grow, when they could get food for their ponies and game for themselves, then the more reckless of them would steal away from the forts and again commit depredations. This happened times without number, and it was not surprising that raiding began the next year after the Medicine Lodge treaties. The Indians needed a severe lesson. The pity of it is that the innocent had to be

[1] Milton W. Reynolds wrote concerning this gathering on the Medicine Lodge as follows: "On one occasion we came very nearly being gobbled up by the Indians, and probably would have been but for the presence of two old Indian fighters, Governor Samuel Crawford (of Kansas) and General William S. Harney. It was a dull, dreary day. Listlessly and lazily the drops of rain drizzled all day long. Towards evening the Indians became restless; they moved about sullenly, sluggishly, and slow; they would not come into the council. Governor Crawford called General Harney's attention to the unpleasant signs which, to his practiced eye, were plainly visible. The troops of the escort were at once drawn up in a hollow square with the Peace Commission in the center, and a Gatling gun turned straight upon the camp of the Indians. Needless to say, there was no massacre such as occurred under similar circumstances in the lava beds of Oregon a few years later. After many days of powwowing the Indians treated. They were given homes in the Indian Territory. The commission gave away empires to the Cheyenne, Arapahoe, Kiowa, Comanche, and Apache; they were given anything they wanted in the way of lands and hunting grounds in the Indian Territory — anything to get them out of the state of Kansas."

[2] According to the Cheyenne-Arapahoe agreement they were to have all lands south of Kansas and north of the Cimarron, west of the Arkansas. This gave them the greater portion of the Cherokee Strip. They never lived on it. The confederated Comanches, Kiowas, and Apaches of the Plains were to have the territory between the Washita and Red rivers, as marked upon the map, p. 137.

punished with the guilty. In August, 1868, a band of Cheyennes came to Fort Hays, Kansas. It was evidently a war party, for no women and children were with them. They claimed, however, to be a hunting party, came into the fort, smoked the pipe of peace, and were given rations. Within three days this same band ruthlessly slaughtered the settlers in the valley of the Solomon and Saline rivers, and then rapidly withdrew to their unknown haunts in the wilds of western Oklahoma. It was claimed that Black Kettle headed this party, but there is no proof of it, although if any Indian had cause to lead a war party, it was this chief whose band had been so wantonly assailed at Sand Creek (sect. 159). Major E. W. Wyncoop, the Cheyenne and Arapahoe agent, always insisted that Black Kettle was in camp near Fort Larned at the time. At any rate, whether innocent or guilty, it was Black Kettle and his band of Cheyennes that were doomed to suffer for the offense.

163. Battle of the Washita. General Philip Sheridan was in command in Kansas, and with his accustomed energy he proposed to punish the Indians at once. A regiment of Kansas volunteers was called for, which was speedily recruited by Governor Crawford of that state. It was mustered into the United States service as the Nineteenth Kansas Volunteers. This regiment and the Seventh United States Cavalry formed the punitative expedition. A place of rendezvous was established on Beaver Creek in the northwestern corner of what is now Woodward County, Oklahoma. It was named Camp Supply because of the large supply of provisions there. Later it was called Fort Supply[1] (sect. 102). Winter came early that year,

[1] In 1899 the old barracks at Fort Supply were given to the territorial government for an insane hospital. Oklahoma accepted the gift in 1903.

and on account of the heavy snow the Kansas regiment was delayed. But this snow proved an advantage to the soldiers. The Plains Indians could not fight in winter, since they were unable to secure provender for their ponies, and without them they were helpless. So the most effective way to deal a telling blow upon them was to find and surprise one of their winter camps. This is what General Sheridan proposed to do. Let us follow the account of General George A. Custer, the brilliant cavalry officer of the Army of the Potomac, who was chosen by Sheridan to deliver the blow.

164. Custer's Account of the Battle. Custer left Camp Supply with eight hundred mounted men of the Seventh Cavalry, with forty sharpshooters, and a considerable company of scouts and Indian guides. The season was too far advanced to expect any of the Indians to be absent from the village; yet twelve miles up the Canadian, Major Joel H. Elliot, who commanded the advance, struck the trail of a war party leading a little east of south. He immediately reported to Custer, crossed the river, and followed the trail. General Custer was to hurry forward with the main body of the troops as rapidly as possible. When the main column struck the South Canadian it immediately crossed. The wagons were parked and eighty men were stationed as a guard. All tents and extra blankets had to be left behind. Each man took one hundred rounds of ammunition, a small amount of coffee and hard bread, and an equally small amount of forage for his horse. It was November 26, 1868, with a foot of snow on the open plains and the wind blowing bitterly cold. There was no stop for rest or refreshment. It was nine o'clock at night when Custer's column overtook Major Elliot's men, whose trail they had been following for hours. The united

party stopped for an hour under the bank of a creek of good water. Small fires were built and each man had a cup of coffee and some "hard-tack." Little Beaver, who acted as spokesman for the Osage scouts, like all Indians was much opposed to a night attack, but the weary soldiers were hurried on down the creek by the impatient general. Two Osage scouts, three or four hundred yards in advance, led the command on foot, silent as panthers creeping upon their prey. Then came the rest of the Osages and white scouts in single file, "among the rest, California Joe. With these," says General Custer, "I rode, that I might be as near the advance guard as possible. The cavalry followed in the rear, at the distance of a quarter or half a mile. This precaution was necessary from the fact that the snow, which had thawed slightly during the day, was then freezing, forming a crust which, broken by the tread of so many hundred feet, produced a noise capable of being heard at a long distance. Orders were given prohibiting even a word being uttered above a whisper. No one was permitted to strike a match or light a pipe. In this silent manner we rode mile after mile."[1] At last the two Osages came upon the village. The column was halted, and for several bitter cold hours these men, while waiting for morning, had to stand in the snow, not even being allowed to stamp their feet. Before daylight the Indian village was surrounded. Just at dawn all the companies that had silently taken their positions attacked the Indians in their wigwams. The band played "Garry Owen," and the cavalry, cheering and shouting, rode madly into the town.

165. No One to give Indians' Story. One can hardly judge of the consternation and surprise that this sudden attack

[1] Custer, G. A., My Life on the Plains (New York, 1874), p. 157.

caused in the Indian village. Here they were in a winter camp, surrounded by their women and children. They imagined themselves in absolute security, miles away from any danger. The village was located on the headwaters of the Washita, not far from where Cheyenne, in Roger Mills County, is now situated. It was then one of the most inaccessible spots in the whole United States. To be thus thrown from what they supposed was absolute security into the very jaws of death was indeed a rude awakening. But the Cheyennes sold their lives dearly. There was but a handful of them — Custer could count the bodies of but one hundred and three braves after the fight was over. But these Indians had been trained to war from their infancy, and men, women, and children did not propose to be slaughtered without a struggle. They dropped behind trees, sought holes in the creek's bank, and, as best they could, returned the soldiers' fire. It seems that Black Kettle's camp was but one of a long chain of Indian villages that extended down the Washita, and the braves from these villages, hearing the heavy firing, came to investigate. They were joined by a few of the Cheyennes who had escaped from the trap. These fleeing Indians were pursued by Major Joel H. Elliot and fourteen men, who rode into the great body of Indians coming up the Washita and not one of them returned to tell the story. When General Custer realized that large numbers of Indians were concentrating in his front, he immediately gathered up the eighty-three women and children he had captured, shot eight hundred head of ponies, and burned the tepees of the Indians and all their winter stores. He then made a pretense of attacking the cloud of braves that had gathered from the lower Indian villages, but in the darkness

wheeled to the north and was back at Camp Supply on November 30. Custer lost twenty-one men, two of these being officers, Captain Louis M. Hamilton, a grandson of Alexander Hamilton, and Major Elliot. Fourteen Americans were wounded. The Indians lost the hundred and three braves before mentioned. One of them was the famous Black Kettle, and another was Little Rock, a prominent Cheyenne chief. General Custer was careful not to mention the number of women and children shot down by the soldiers. It is hard to make anything heroic out of the battle of the Washita. When almost nine hundred trained American soldiers surround and surprise possibly one hundred and twenty-five sleeping Indians, it is not strange that the Indians get much the worst of the fight.

166. Sheridan at Fort Cobb. On December 7, 1868, General Sheridan left Camp Supply with Custer's regiment and the Nineteenth Kansas that had now joined the command. J. S. Crawford was colonel of the Kansas regiment, having resigned as governor to lead these troops. The soldiers revisited the battle field on the Washita, and found that Indian villages extended for a distance of twelve miles down the stream. The Arapahoes, under Little Raven, had been camped next below Black Kettle's Cheyennes; then came the Kiowas, under Satanta (sects. 161, 171) and Lone Wolf. More Cheyenne and Arapahoe villages followed, and in all there were six hundred lodges. The Indians had disappeared. "Nothing," says General Custer, "could exceed the disorder and haste with which these tribes had fled from their camp grounds. They had abandoned thousands of lodge poles, some of which were still standing," [1] and immense numbers

[1] Custer, G. A., My Life on the Plains, p. 196.

of camp kettles, cooking utensils, coffee mills, axes, and several hundred buffalo robes were left behind. The bodies of Major Elliot and fourteen of his men were found two miles below where the battle took place. They were in a ring with the bodies of their horses, where they had sold their lives as dearly as possible. Ma-wis-sa, a sister of Black Kettle, and Mo-nah-se-tah, a daughter of Little Rock, were taken by General Sheridan to Fort Cobb. The other Cheyenne prisoners were sent to Fort Hays. On the way south Satanta and Lone Wolf were taken prisoners. They had hurried down to Fort Cobb and obtained a letter from General W. B. Hazen, who was then superintendent of the southern Indians, in which it was stated that they were good Indians and friendly. This was a regular scheme of hostile braves. The old men, the women, and the children would draw rations while the unruly warriors assailed the whites. If the braves got into difficulties, as they did on the Washita, they would join the noncombatants and be good Indians for a time. There is no doubt that white men were often to blame for Indian uprisings, and there are also grave doubts whether Black Kettle was responsible for any of the Indian depredations. It was this chief's misfortune that his camp was the one Custer first came upon while following the Indian trail down the Washita. But it is equally true that the Cheyennes and Arapahoes needed a severe lesson.[1] This they got at the battle of the Washita. It proved enough for

[1] In Satanta's camp on the Washita, Custer tells of finding a white woman and baby that had been knocked in the head and scalped. In the hurried flight of the tribe prisoners were not bothered with. The next summer the Cheyennes were compelled to surrender a Miss White and a Mrs. Morgan whom they had captured in Kansas. These young women had suffered indignities too horrible to be repeated in print.

them, and has never had to be repeated. The greater part of the next year (1869) was spent by Generals Sheridan and Custer in trying to get the Indians to come and settle down about their respective agencies.

167. Fort Sill Established. During the summer of 1868 General Benjamin H. Grierson, colonel of the Tenth Cavalry (a colored regiment), had established Camp Wichita, so as to be near the Kiowa, Comanche, and Apache country. In January, 1869, General Sheridan visited the camp and was impressed with the favorable location at the mouth of Medicine Creek on the east slope of the Wichita Mountains. He renamed the camp Fort Sill, after one of his classmates, General J. W. Sill, who was killed at the battle of Murfreesboro.[1] In its vicinity were eventually located the Kiowas, Comanches, and the Apaches of the Plains, who were confederated with these tribes (sect. 161). Later the Apache prisoners of war were brought to Fort Sill from Alabama, and here they are still held. Geronimo, head chief of these Apaches, for years waged relentless war upon the settlers of Arizona and Mexico. Captured in 1887 by General Lawton, the old chief and his tribe were imprisoned at

Geronimo, the Famous Apache Prisoner of War, who died in 1909

[1] Fort Sill is now the largest military post in the United States. There are over one hundred thousand acres here belonging to the government, and the mountains afford splendid facilities for artillery practice.

Pensacola, Florida, until 1890. Then for five years the tribe was held at Mount Vernon Barracks, Alabama. In 1895 these Apache prisoners of war were removed to Fort Sill. They have made remarkable progress, and there is little excuse for still holding them as prisoners. Geronimo died in February, 1909. He always pined for his Arizona home.

168. The Wichita Agency. In the vicinity of Fort Cobb the Wichita agency (Anadarko) had been long established. Here were located the following tribes, which in 1880 numbered 1250 : Wichitas (299), Ke-e-chi-es (126), Wacoes (140), To-woc-ca-roes (127), Caddoes (392), I-o-nes (85), Delawares (81) (sect. 83), and a few Anadarkos. These tribes proved much less troublesome than the Comanches and Cheyennes, and because of this, Fort Cobb was abandoned in 1869 (sect. 102).

169. Appointment of Quaker Agents. President Grant's administration marks a decided change in the government's Indian policy. Before this time the Indians were, as a rule, regarded as independent nations, to be warred with and conquered, to be tricked in treaties, and to be punished for violating obligations not understood. General Grant entirely reversed this policy. The Indians were henceforth to be regarded as wards of the nation. They were to be looked after and protected. They were to be punished if they needed punishment, but the policy of the government was not to cheat them and get rid of them, but to help and civilize them. The first step in this new policy was the appointment of the Quaker agents. The Society of Friends, ever since the coming of Penn, had been interested in Indian missions. These missionaries had often found that the rough, grasping men appointed as Indian agents did more harm among the

Indians in a week than they could undo in years. Soon after the election of President Grant a committee of Friends from Philadelphia called on him. This committee asked that the President appoint religious men as Indian agents, so that they, in turn, would secure upright, moral men as agency employees. General Grant listened to the deputation with marked attention, and answered them at once: "Gentlemen, your advice is good. Now give me the names of some Friends for Indian agents and I will appoint them."[1] The Quaker delegation was much surprised at the immediate success of their mission, and requested time for consultation. The names were soon after submitted to General Grant, and it thus came about that ten peace-loving Quakers soon found themselves on the frontier as Indian agents, striving to civilize and help these unruly wards of the nation. In 1869 Laurie Tatum was appointed the Kiowa, Comanche, Apache agent at Fort Sill, and the same year Brinton Darlington became the agent for the Cheyennes and Arapahoes.

170. Indians continue to Raid. It was difficult indeed to hold the Kiowas and Comanches on the reservation. It was hard to convince the Indians that Texas was a part of the United States. For years they had plundered the white settlers of that state, murdering the men and carrying the women and children away. It was thus that Cynthia Anne Parker came to be the mother of Quannah Parker, the present head chief of the Comanches.[2] After the arrival of agent Tatum

[1] Quoted in Thoburn and Holcomb's Oklahoma History, p. 131.

[2] She was captured at the age of nine years by the Comanches in 1836, when on one of their periodical raids into Texas. She grew to womanhood in the tribe and became the wife of the Comanche chief Petch No-co-na. This chief was killed in a fight near Quannah, Texas, in 1860, with the Texas rangers under Colonel L. S. Ross. At this time Cynthia Anne

small bands of Indians would slip off to Texas, where they would murder and pillage, and then get back to the vicinity of Fort Sill before it was known that they were gone. "When questioned by the agent, the Indians would lie, declare that not one of them had been away," says Colonel Norvell, "and the innocent old Quaker would believe them. It was not until horses and ponies stolen in Texas had been found in the possession of the Indians and fully identified, that he became suspicious of his wards."[1] In May, 1871, General W. T. Sherman, then commander in chief of the army, on a tour of inspection, started from Fort Richardson, Texas, for Fort Sill. He had traveled but a few miles when he suddenly came upon a wagon train that had been raided by the Indians. The wagons were still burning, and to the wheels were tied the teamsters, all of whom had been scalped. General Sherman hastened to Fort Sill in the hope of heading off these raiders, but the Indians reached there about the same time the general arrived. Without losing a moment, the principal chiefs were summoned to appear in front of the quarters of the post commander, General Grierson. They came, and with them about two hundred of their armed warriors.

171. Satanta and Satank. General Sherman, General Grierson, Mr. Tatum the agent, Horace Jones the interpreter, and several others assembled on the porch. The Indians were in an ugly mood. Fortunately General Grierson

Parker was restored to her people. But she pined for the people of her adoption and her two Indian sons. At the time of his mother's recapture by the Texas rangers Quannah Parker was eleven years old. He was for years the most irreconcilable of Comanche war chiefs, but to-day he consistently advocates everything that makes for civilization and progress in his tribe. He has a beautiful home near Cache in Comanche County.

[1] See account of Colonel S. T. Norvell, U.S.A., retired, in *Oklahoman*, Oklahoma City, for April 22, 1909.

had ordered the cavalry to surround the Indians as soon as they assembled on the parade grounds. This precaution undoubtedly prevented a massacre. General Sherman told of what he had just seen in Texas and demanded the surrender of three Kiowa chiefs, whose names he had in some way learned. When he made the demand, the Indians accompanying the chiefs began to show hostility, and for a moment the officers on the porch faced death. Then, after some hesitation, Satanta and Satank stepped forward, Satanta saying:

"Yes, I led that raid. I have often asked for arms and ammunition which have not been furnished. I have made many other requests which have not been granted. You do not listen to my talk. The white people are preparing to build a railroad through our country, which will not be permitted. Some years ago they took us by the hair and pulled us here close to Texas, where we have to fight them. More recently I was arrested and confined for several days, but that is played out now. There will never be any more Kiowa Indians arrested. I want you to remember that. On account of these grievances, a short time ago, I took about a hundred of my warriors to Texas to teach them how to fight. I took the chiefs Satank, Eagle Heart, Big Bow, Big Tree, and Fast Bear. We found a mule train, which we captured, and killed seven men. Two of our own men were killed, too, but we are willing to call it even. It is all over now, and it is not necessary to say much more about it. We don't expect to do much raiding around here this summer, but we do expect to raid in Texas. If any other Indian claims the honor of leading that party, he is lying about it to you. I did it myself."[1]

172. The Chiefs Arrested. Satanta did not know General Sherman when he boasted that "no more Kiowas would be arrested." He and Satank were immediately put under arrest, in spite of the threatening attitude of the two hundred Kiowa braves. Big Tree was not present, but he was found in the

[1] Quoted in Thoburn and Holcomb's Oklahoma History, p. 126.

post trader's store. When the guard came to arrest him, he jumped through a window, taking the glass and sash with him, but was later captured by the post guard. These three chiefs were immediately sent to Texas for trial.[1] Satank was so unruly that he was killed by the soldiers the first day out from Fort Sill. Satanta and Big Tree were sentenced to be hanged by the Texas court that tried them, but their sentence was later commuted to life imprisonment in the Texas penitentiary. The Kiowas kept promising good behavior and imploring the return of the imprisoned chiefs. The federal government finally prevailed upon the Texas authorities to release them. The two chiefs were brought to Fort Sill by Governor Davis in person. They were paroled on good behavior in 1873. Satanta broke his parole the next year and was taken back to the Texas prison. Here he committed suicide some years later. Satanta was a splendid type of Indian. He was a shrewd, capable leader of his tribe, but he refused to submit to the restraint of advancing civilization put upon him, and he had either to submit or be crushed. He refused to yield, and the fate overtook him that awaits every man, red or white, who refuses to be bound by the usages of civilized society.

[1] Satanta and Big Tree were in one wagon and Satank, who was so unruly that he had to be shackled, was in another, guarded by two soldiers. The story goes that Satank spoke to a Caddo Indian, George Washington, who rode by his wagon. "Satank wishes to send a little message to the Kiowas. Tell the Kiowas that Satank is dead. He died the first day out from Fort Sill. His bones are lying by the road. He wishes his people to gather them up and take them home." Then chanting his death song in a low voice, he wrenched the handcuffs from his wrists, tearing the flesh as he did it, and leaped upon the guards with a knife he had succeeded in concealing. The two soldiers jumped to the ground from the wagon. The enraged Indian seized one of their rifles, but before he had time to fire, he was shot down. His body was taken back to Fort Sill for burial.

173. The Last Indian Outbreak in Oklahoma. The Cheyennes at Darlington were fully eighty miles from the garrison at Fort Sill. Fort Cobb had been abandoned in 1869. These Indians often took the kindly treatment of the Quaker agent for cowardice. While they were promised certain rations, these were not furnished as regularly as they should have been, and thieving contractors supplied them with beef cattle that were so old and poor that the animals could hardly stand when brought to the agency for slaughter. The theory of the contractors was that anything was good enough for Indians. So by 1873 the Cheyennes had forgotten Black Kettle and the Washita, and commenced to raid again. While the Kiowas and Comanches generally went south into Texas, the Cheyennes and Arapahoes, as a rule, made their forays into Kansas. It was, however, only a small minority of any of these tribes that thus pillaged. The great majority remained quietly on their respective reservations as they had promised to do. In 1874 the government was forced to make war upon the Indians. The Quahada band of Comanches, the faction to which Quannah Parker belonged, never had come into the reservation. In 1872 this band had been surprised by General R. S. McKenzie and suffered some losses.[1] On June 25, 1874, they attacked a party of buffalo hunters at Adobe Wall in the Texas Panhandle, but were driven off. A war party of Kiowas and Comanches burned part of the Wichita agency building at Anadarko in August. The Cheyennes attacked a train on the Chisholm Trail (sect. 184) near

[1] At this fight the Quahada Comanches lost but a few men, but General McKenzie captured most of their women and children. It was then, for the first time, that they came in. They were forced to give up the white women and children whom they held prisoners before they received back their own wives and offspring.

the present town of Hennessey. They killed the three teamsters, and having captured Pat Hennessey, the train master, they tied him to a wagon wheel and burned him alive. The Cheyennes pillaged as far north as the Republican valley in Kansas.

174. General Miles restores Order. In the winter of 1874 General Nelson A. Miles took personal command. He was an old Indian fighter and knew the Indian's inability to stand a winter campaign. He followed the hostile Comanches and Cheyennes relentlessly until they were forced to an unconditional surrender. The braves were all put in jail; the chiefs were chained. Those not captured by General Miles came in and surrendered themselves. This ended Oklahoma's Indian wars.[1]

175. Fort Reno Established. It was at first intended to locate the Cheyennes and Arapahoes in the Cherokee Strip (p. 144, note), and when General Custer returned to Camp Supply in 1869, an effort was made to have all the Cheyennes and Arapahoes settle in its vicinity. Later these tribes were given all the Creek and Seminole lands west of the 98th meridian, between the Cherokee Outlet and the Caddo-Comanche country (see map, p. 137). The agency was located at Darlington, where, removed from the influence of a frontier garrison, their Quaker agent hoped to civilize them. But the outbreak of 1874 made it necessary to locate a post in

[1] The flight of the northern Cheyennes from the Darlington agency, September 9, 1878, resulted in a trail of blood from Fort Reno through western Kansas. These Indians had fought with Sitting Bull at the time Custer was killed on the Little Big Horn in 1876. The next year they were brought to the southern Cheyenne agency as a punishment. Dull Knife led this flight north. These Cheyennes were never brought back to Oklahoma, and later the rest of the northern Cheyennes were permitted to move to Pine Ridge.

their immediate vicinity. Fort Reno was established that year as a result of this need.

176. Summary. Thus we see that in the ten years immediately following the war a large number of Indian tribes were located in Oklahoma. The more civilized tribes were placed in the eastern and central portions of the Territory, while the less civilized ones were given the extreme western portion of the Indian country. These tribes had to be compelled to recognize the federal authority, obey the law, and remain at home. Since they have learned this, they have progressed as rapidly as one could reasonably expect.

CHAPTER XVI

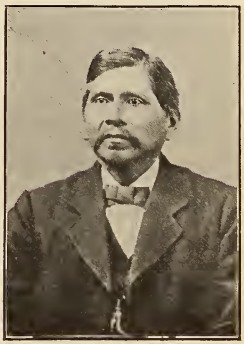
OKLAHOMA OPENINGS

177. Plan of Government in the Treaties of 1866. All the treaties with the Five Civilized Tribes made at Washington in 1866 contained a more or less complete outline of a territorial government (sect. 149). There was to be a legislature of one house, composed of one delegate for each tribe, and extra delegates for each thousand Indians in the respective tribes. The superintendent of Indian affairs was to preside over this council and was also to act as governor of the Territory. There were to be territorial courts, and the Indian lands were to be surveyed and allotted. The council was to elect a territorial delegate, who was to have a seat in Congress and look after Indian interests.[1] But these plans all came to nothing because Congress refused to pass an Organic Act for the Territory (see Abbott's "Oklahoma Civics," sect. 52).

178. Origin of the Name *Oklahoma*. However, if Indian Territory failed to obtain a united, efficient government from the treaties of 1866, it at least obtained a most beautiful, mellow name. We have used the word *Oklahoma* to designate the Indian country from the first page of this little

[1] Indian representation at Washington, we have seen, was suggested in the Delaware treaty of 1778 (sect. 33). Three such delegates were allowed seats in the Confederate congress at Richmond. Elias C. Boudinot was a delegate from the Cherokees to both the Confederate congresses, as was Robert M. Jones for the Choctaws and Chickasaws. S. B. Callahan represented the Creeks and Seminoles in the second congress of the Confederacy. Rebellion Records, Vol. CXXIX, pp. 1189, 1191.

history, but in reality Indian Territory was never called Oklahoma previous to 1866. Article VIII of section 10 of the Choctaw and Chickasaw treaty states that "the Superintendent of Indian affairs shall be the executive of the said Territory of Oklahoma."[1] This, so far as I can find, is the first mention of the word *Oklahoma*. The name was suggested by the Reverend Allen Wright, a full-blood Choctaw and at one time principal chief of the tribe. The word means "red people," or "red people's land"; thus *Okla* means "people" or "land" in the sense of a nation, and *homa* means "red."[2] At the time the first territorial bill was drawn in 1867 Colonel E. C. Boudinot (sects. 129, 147), the prominent Cherokee, suggested that this sonorous Choctaw name be accepted. Until the first opening in 1889 (sect. 192), Oklahoma or Indian Territory meant all the Indian country. Then for almost twenty years there were two territories, the unorganized Indian country called Indian Territory, and Oklahoma, the organized western half of the future state. With statehood (1907) the two territories were again united as Oklahoma.



Reverend Allen Wright, Principal Chief of the Choctaw Nation (1868–1869)

He first suggested the word *Oklahoma* as a name for the Indian country

[1] Senate Document No. 452, "Indian Affairs: Laws and Treaties" (Washington, 1903), Vol. II, p. 705.

[2] This is also the derivation and meaning of the word given by the Reverend J. S. Murrow, for many years a Choctaw missionary and a thorough scholar, in Portrait and Biographical Record of Oklahoma (Chicago, 1901), p. 9. See *Sturm's Oklahoma Magazine* (February, 1910), p. 46.

179. Civilized Tribes opposed Territorial Organization. The Five Civilized Tribes were almost a unit against the bills which were before Congress from 1867 to 1889, seeking to establish an Organic Act for Oklahoma. They feared that if they gave the railroads large grants of land, and settlers were allowed to come into the Territory, grasping white men ("Yankees" they called them) would get everything away from the simple-minded full bloods, who were not able to trade and scheme with the whites. Thus they opposed any measure that would allow white settlement in their country.

180. Okmulgee Constitution. Alarmed at the vigorous efforts being made in Congress to force upon them a form of government they did not want, the Indians decided to defeat them by proposing a plan that suited them better and yielded less to white interests. An intertribal council met at Okmulgee, the capital of the Creek nation, from December 5 to 11, 1870, to decide what should be done. A committee of twelve men was appointed for the purpose of drafting a constitution that would unite the tribes of Indian Territory in one government. William P. Ross, a nephew of the famous John Ross, was chairman of this committee. The constitution submitted by these gentlemen proposed a confederation of the Indian tribes, the land to be surveyed and allotted, but the surplus land in each tribe to be held in common. Such railroads were to be allowed in the Territory as the treaties required, and no more. But white men were to be as rigorously excluded as before. It was to be an Indian government, by Indians and for Indians. The leaders and a few of the more progressive tribesmen, especially in the Cherokee and Choctaw nations, favored the Okmulgee plan; no one, apparently, was in favor of territorial

organization.[1] The Okmulgee constitution was not, however, defeated on account of its progressive features. The Chickasaw legislature rejected the instrument because it provided for proportional representation. The Chickasaws were few in numbers and would be outvoted; therefore they did not propose to join any such union. This was the same objection that the small states made at the time the federal constitution was formed, but the Indians lacked ability to compromise their differences.

181. Coming of the Railroads. Almost every step in the development of Indian Territory after the Civil War was in some way related to the treaties of 1866. This was especially true of the coming of the railroads. The Indians never looked with favor upon railroads; the Plains Indians opposed them because they frightened away the game. The Civilized Tribes realized that with the railroads there would come an army of undesirable intruders. The treaties of 1866 excluded all intruders and at the same time required that railroads be allowed to cross the respective nations. The Indians knew that this was impossible, — that when the railroads came, white men would come with them. Therefore, to minimize this evil as much as possible, the Creek and Cherokee treaties provided that only two lines should cross their tribal land, — one running east and west, the other north and south. The Choctaw-Chickasaw and Seminole treaties contained no such

[1] Tandy Walker, a nephew of Ex-Governor Walker of the Choctaw nation, told Beadle that he was the only Choctaw in the district in favor of the territorial bill, and that there probably were not a hundred Choctaws in the nation who favored sectionalizing and admitting white immigrants (Beadle, The Undeveloped West, p. 399). E. C. Boudinot seems to have been the only leading Cherokee who favored the Oklahoma bill. His brother, William Boudinot, editor of the *Cherokee Advocate*, in the spring of 1872 opposed this bill, but he supported the Okmulgee constitution.

stipulation. With the revival of business after the war, railroad building was resumed in the Southwest. Congress in 1866 passed an act granting a right of way across Indian Territory from Kansas to Texas to the first railroad that reached the border. In 1870 there was an exciting race as rival lines approached the Cherokee boundary. The Missouri, Kansas, and Texas won the victory.[1] It crossed the Indian Territory border, June 6, 1870, entering the country through the fertile Neosho valley. It built a little west of south, passing through Vinita, Muskogee, and the McAlester coal fields on to Denison, Texas. In 1871 the Atlantic and Pacific entered the Territory from the east, and a little later built as far west as Vinita. This was a link in the once famous "Thirty-fifth Parallel Road," which was to be extended to the Pacific Ocean as nearly as possible along this parallel of latitude. It is needless to say that it never became the great transcontinental line that its projectors expected it to be.

182. Why the Railroads favored the Oklahoma Bill. The railroads, seeking entrance into Oklahoma, favored territorial organization in accordance with the bill then before Congress. The Indians were each to receive a quarter section of land, the rest to be "public land." The charters of the Missouri, Kansas, and Texas Railroad gave it every section designated by an odd number for ten miles on each side of the track, "provided said lands became a part of the public lands of the United States." Thus, if this region was declared public

[1] "By Government charter this privilege [of crossing the Indian Territory] was granted to the two railroads which reached the border first. The Leavenworth, Lawrence, and Galveston road and the Kansas and Fort Scott road both started for it, but were distanced by the Missouri, Kansas, and Texas. . . . The Atlantic and Pacific reached it first from the east, early in 1871." — Beadle, The Undeveloped West, p. 354.

land, the Missouri, Kansas, and Texas Railroad would receive absolutely free sixty-four hundred acres of Indian land for every mile of track it laid. The grant to the Atlantic and Pacific road was even more liberal, being twenty sections to the mile, or twelve thousand eight hundred acres. The Indians would certainly have been compelled to yield to the clamoring settlers and to the vast commercial interests that financed these railroads, had not another industry, hostile to the settlement of this region, come to their assistance. For centuries the prairies of Oklahoma supported countless herds of buffalo. Encroaching civilization, and buffalo hunters who slaughtered these animals often for the mere lust of killing, had by the early seventies almost denuded the plains of this magnificent game. Railroads in Kansas and Texas brought farmers with them. As soon as the land began to be settled the cattle range was ruined. Naturally the cattle kings, men who had thousands and sometimes millions of dollars invested in hoof and horn, turned to Oklahoma for grass lands. Such men as J. Pierpont Morgan and Levi P. Morton (later Vice President of the United States) were directors of the Missouri, Kansas, and Texas Railroad. A railway through a poorly settled country is not a profitable investment. These great financiers of New York City, and others who were interested with them, would certainly have succeeded in having the Indian country open to settlement, had not cattle men, hardly less wealthy and more directly interested, strenuously opposed it.

183. Reign of the Cattle Kings. The Indians of all the Civilized Tribes made wonderful advancement after the war. They came back to ruined homes and devastated farms. Their vast herds, their chief wealth, had all been seized, but they

set resolutely to work to rebuild their homes and to reëstablish their schools and their institutions. Their progress in the decade following the war was nothing short of marvelous, but they still did not occupy any considerable part of the vast region the government had given them. Since there were no slaves, white men were given permits to come in and work the Indian lands. Once in the Territory, it was almost impossible to get rid of these intruders. They themselves turned to cattle raising, and by paying slight fees, sometimes to the tribal government but more often to corrupt Indians, they fattened their herds on these tribal grass lands almost free of charge. On the "unassigned land" (see map, p. 137) and in the Cherokee Strip the cattle men often occupied the land without even a pretense of lawful authority. When necessary they paid a nominal rent, called "grass money," to the agent of the reservation tribes. The Cherokees still had a claim to all the Outlet not assigned to minor tribes, and eventually the pasture lands located here had to be leased from the Cherokee nation. But the cattle men obtained these leases on their own terms, paid grudgingly only what they were compelled to pay, and for a generation reigned supreme in Oklahoma. As these men grew wealthy, they held conventions; they subsidized the press of Kansas and Texas by paying large sums for advertisements; they entered politics in all the neighboring states, sending to Congress either cattle men or lawyers who were their attorneys and tools. Thus the cattle men made it possible for the Indians to hold their own country in their own way, for the nomadic, herder life which these men perpetuated in the country suited the tastes of most of the Indians much better than a more advanced civilization.

184. Trails. During the Civil War immense herds of cattle and horses accumulated upon the Texas prairies. The war had also developed in the North a great demand for meat. The railway lines in Kansas made it possible for the Texas cattle men to seek the Chicago and St. Louis markets. In 1866 began this first movement of range cattle northward. The stock was taken north by easy stages, grazing as it moved. Millions of head of cattle were thus driven to Northern markets during this period. The cattle would be shipped from convenient points in Kansas, until new railroads offered more accessible facilities in Oklahoma. These trails were frequently ten miles wide and shifted with the season and the shipping point for which the herd was headed. Also numerous wagon trails were established, generally leading from some convenient point on the Missouri, Kansas, and Texas Railroad to the forts in the western part of the territory, and to the numerous agencies and missions established after the settlement of the minor tribes on the receded lands (sect. 150). Other trails led from railroad towns in Kansas and Texas. Possibly the most famous of these roads was the Chisholm Trail. It was laid out by Jesse Chisholm in the spring of 1865, and extended two hundred and twenty miles from the present site of Wichita, Kansas, to the Wichita agency at Anadarko. Government supply trains and cattle men regularly used this trail until the Rock Island Railroad invaded the territory in 1890.

185. Building of Other Railroads. The cattle men, unlike the Indians, had no particular objection to the building of railroads if they did not bring with them settlers to preëmpt the range. In 1887 the Atchison, Topeka, and Santa Fe completed its line across the territory. It entered Oklahoma

just south of Arkansas City and ran nearly due south to Texas, passing almost through the center of the territory. In 1889 the Chicago, Rock Island, and Pacific built south from Wichita, Kansas. By June, 1890, it had trains running to Minco in the northwestern corner of the Chickasaw County, and it eventually built south, paralleling the Santa Fe to Fort Worth, Texas.

186. Oklahoma Boomers. As the desire for unoccupied lands grew, a large army of prospective settlers clamored for the unused lands of Indian Territory. These settlers joined forces with the railroads, and together they waged war on the cattle kings. On April 15, 1879, T. C. Sears, a prominent attorney of the Missouri, Kansas, and Texas Railroad, announced that, with E. C. Boudinot, the eminent Cherokee, he had investigated the legal status of lands in the western portion of the Indian country, and they had learned that there were fourteen million acres of public land located there, which were subject to homestead entry. This appears to be the original discovery of the "unassigned lands" (sect. 150), and immediately aroused much interest. Three "colonies" were at once organized to settle upon these lands. Two of them were to come south from Kansas and one was a Texas organization. April 26, 1879, President Hayes issued a proclamation forbidding the proposed settlement. One of the "colonies," under the leadership of Charles C. Carpenter, who in this way had three years before rushed the Black Hills region, in spite of the proclamation crossed the border May 7, 1879. He was promptly ejected by General Wesley Merritt in command of troops of the Fifth Cavalry.

187. David L. Payne. It must have been during the winter of 1879–1880 that David L. Payne, a frontiersman of

force and character, joined the Oklahoma boomers; for in the spring of 1880 we find him energetically at work organizing another colony. He was by all odds the most unique and capable of the agitators who, during the next quarter of a century, completely routed the cattle kings and abolished the communistic titles of the Indians. David L. Payne was born near Fairmont, Indiana, in 1836. At twenty-one he came to Kansas, and three years later, at the beginning of the Civil War, he enlisted in a Union regiment, serving with distinction. On his return to Kansas he was elected to the legislature, became a captain in the Eighteenth Cavalry, and held a like position in the Nineteenth Kansas Regiment that accompanied Sheridan and Custer into Oklahoma immediately following the battle of the Washita. While in Washington as assistant doorkeeper of the House of Representatives he learned of the plan to settle Oklahoma, and his love of adventure called him to the frontier. The spring of 1880 found Captain Payne back again in Kansas, and from then until his death four years later the history of the efforts to colonize Oklahoma is little more than a biography of this man. Again and again presidential proclamations warned the boomers out of the forbidden territory, and as often would Captain Payne and his persistent followers return, only to be again ousted. The soldiers sent by the President to eject intruders never bothered the ranches of cattle men, although these were in the Indian country with no more legal right than the settler. When Payne and his followers were arrested and taken before a federal judge, the government would never force the case to trial. The matter would be put off from time to time, although Captain Payne, confident of the justice of his cause, was always ready and anxious

to have a legal hearing. As soon as he was out on bail or his case was dismissed, he would assemble another expedition and return to the forbidden district. Finally, all this agitation began to have the desired effect. The cattle men were put on the defensive. It was then that they began to spend money lavishly with Kansas and Texas editors so as to mold public opinion. The story that Oklahoma was only fit for pasture, and that farmers could not possibly live down there, was told so often that the men who told the lie came finally to believe it.

188. Captain Couch succeeded Payne. The sudden death of Captain Payne at Wellington, November 27, 1884, put something of a damper on boomer enthusiasm, although Captain William L. Couch, Payne's able lieutenant, the very next year led a formidable expedition into what is now Payne County. In January, 1885, Captain Couch was forced to withdraw. He made a second attempt in November of the same year, with no better success. This was the year that the Santa Fe built into the territory from Arkansas City (sect. 185), and the boomers were convinced that Oklahoma would soon be opened to settlement by legal proclamation. Invasion by "colonies" was therefore given up, and agitation through the press, and particularly at Washington, was relied upon to open the country to settlement. But the Oklahoma Bill, introduced in 1885, fared as badly as all other Oklahoma bills. Congress adjourned in 1886 with the Indian country unopened.

189. No Man's Land. Meanwhile, as time hung heavily on the boomers' hands, they turned their attention to No Man's Land. When Texas joined the United States in 1845, all its territory north of 36° 30′ had to be surrendered,

because, according to the Missouri Compromise, there could be no more slave territory north of that line (sect. 14). When Kansas was organized in 1856 its southern boundary was made 37°. This left a little strip of territory west of the 100th meridian, north of Texas and south of Kansas, long known as No Man's Land. It now constitutes the Panhandle of Oklahoma, Beaver, Texas, and Cimarron counties. This region was unorganized land to which the Indians laid no claim. Shut out of Oklahoma, some of the boomers tried to find homes here. They could not see why they did not have as much right there as the cattle men, who used those limitless prairies for their own profit without let or hindrance. In the spring of 1887 it was estimated that six thousand people had entered this unorganized territory. The region had not yet been surveyed. There was no land office, and title could not be obtained to the land. With the characteristic instinct of the Americans for law and order, they set up a government of their own.

190. The Territory of Cimarron. A claim board was organized to settle disputed land titles, and in March, 1887, a convention was held which organized the "Territory of Cimarron."[1] This assembly then constituted itself a legislature and proceeded to enact laws for the territory it had created. A rival town to Beaver, Rothwell, then held a convention of its own, and rival delegates were sent to Washington. The Rothwell delegate was John Dale. His idea was to get Congress to organize a territory before anything further was done. O. G. Chase, the Beaver delegate, sought

[1] It was named for the Cimarron River which flows through the Panhandle. It is the Spanish word for the bighorn deer, *carnero cimarron*, that were once found in large numbers on the headwaters of this stream.

to have Congress ratify the somewhat usual proceedings of the Territory of Cimarron. But without waiting for the action of Congress this self-constituted territory elected its second legislature in the fall of 1887. It was in session most of the following winter. This same winter, after Representative James Burnes of Missouri introduced a bill into Congress to provide for the organization of the Territory of Cimarron, enthusiasm ran high in No Man's Land. A full complement of territorial officers and a new delegate to Congress were chosen at the November election of 1888. Here the matter ended. The Territory of Cimarron was forgotten the next year (1889) when Oklahoma was opened, and we shall see that this ambitious commonwealth in 1890 was glad to become an Oklahoma county (sect. 197).

191. The Springer Bill and the Oklahoma Rider. The persistent agitation for the opening of Oklahoma could not but have its results. Various bills were proposed to accomplish this, but the matter did not get seriously before Congress until the winter of 1887–1888. The Indians, realizing the danger, kept a committee constantly at Washington to lobby against the measure, and the cattle kings used their vast resources and influence to prevent the passage of the bill. In March, 1887, at Eufaula, and in May, 1888, at Fort Gibson, intertribal councils were held to protest against the building of more than two railroads through Indian Territory, and also to oppose the proposed opening of the Territory to settlement. But the settlers had able supporters at Washington, among them General James B. Weaver, afterwards Populist candidate for President, and William M. Springer of Illinois, one of the most capable leaders in the House of Representatives. A measure known as the Springer Bill was

introduced to open and organize Oklahoma. It was finally put through the House of Representatives, but failed to pass the Senate. Then, during the closing days of the session, Mr. Springer and those Congressmen who favored the settlement of Oklahoma, not to be thwarted by the lobby of the cattle men, attached to the Indian Appropriation Bill a "rider"[1] to open Oklahoma. In this form the measure was forced through a reluctant Senate. One of the last official acts of President Cleveland in his first term was to sign this bill (March 3, 1889).

192. The First Opening. President Harrison was hardly in office before he issued the first official proclamation throwing Oklahoma open to settlement (April 22, 1889). The farmer had finally won in his long fight against the herdsman. The weary years of waiting on the border were at last at an end. The boomers, who had flocked to Washington during the debate on the Springer Bill, now hastened back to Kansas to prepare for the rush. Never was there such a race in the history of the world. Anglo-Saxons, proverbially land-hungry, had gathered here by thousands to seize upon the last available land in America. Since 1819, when the Fort Smith soldiers ejected the settlers on the Kiamitia (sect. 22), this had been an interdicted region. For three quarters of a century the tide of migration had surged against this dyke; finally it had given way, and in one mad rush the eager settlers hurled themselves upon the coveted fields. A glance at the map (p. 137) will show that the racers had to cross the entire Cherokee Strip, a distance of sixty miles,

[1] A "rider" is some insignificant bill that is not popular, which is attached to an important bill. The men who used this expedient would refuse to let the important bill that all Congress favored, pass unless their rider passed also. The rules of Congress no longer allow riders.

before they arrived at the land open to settlement. The three days preceding the "opening" were allowed for this. Men, women, and children, on horseback and on foot, with bicycles, buggies, wagons, and oxcarts, all gathered at the line as the hour of noon approached. The noise and confusion ceased as the moment for the start drew near. With set faces these racers for a home closely scrutinized the officer who, with watch in hand, awaited the appointed moment. Suddenly there was a puff of smoke from the carbines of the cavalrymen. The report was drowned in the mighty shout of the waiting thousands as they crossed the line. But on they went in breathless haste. The solid front shown at the moment of the start was soon broken, and the forces of the invading boomers seemed rather the wild rout of a defeated foe than the advance of an invading host. Most of the settlers came into the territory from the north, but considerable numbers also sought new homes from convenient locations in the Chickasaw country on the south and from the Pottawatomie reservation, which joined the opened district on the east.

193. Oklahoma Cities Settled. The "rider" which opened Oklahoma to settlement was the hurried expedient of an almost defeated faction. It provided for no territorial government, and no local laws were in force; but it did stipulate that town sites could be laid out. These mushroom cities of the new country were the goal of many of the boomers. Santa Fe trains were run into Oklahoma City and Guthrie from both the north and the south. They were compelled to come under slow schedule so as not to outdistance those who came across country. A dozen places that were mere railroad sidings with a water tank, a section house, and a name, on the morning of April 22, 1889, before dark the

same day were bustling cities with a swarming population of thousands. Guthrie and Oklahoma City were the chief centers of attraction, but Stillwater, Edmond, Norman, El Reno, and Kingfisher all had sufficient population to make them Oklahoma cities of the first class on the day when they first became cities. According to the Census of 1890 the territory had a population of 61,834. The number that entered the territory the year before was probably considerably larger, for many became discouraged during the winter and returned to their former homes.

194. The "Sooners." It was provided that any one who entered the new country previous to the moment set for the opening should forfeit his right to hold land. But many a man, depending upon the confusion and the protecting shelter of some creek bottom, slipped by the cavalrymen and expected in this way to make prior settlement on a quarter section. Such a person was termed a "sooner." Many were the quarrels between the sooners and alleged sooners and *bona fide* settlers. Too often was there recourse to arms to settle these disputes. In this way Captain William L. Couch, Payne's able lieutenant and first mayor of Oklahoma City, lost his life. The dispute over town lots was just as bitter. In Oklahoma City rival land companies contended for possession of lots, and a bitter feud raged for months. But, everything considered, it was an orderly crowd that surged into the cities and onto the farms. There was but little lawlessness. City governments were at once organized, and while these had no real authority, according to the strict letter of the law, yet they were obeyed and proved as useful and efficient a means of maintaining order as were the wholly self-constituted governments of the New England Puritans.

195. The Most Significant Fact in Oklahoma History. The student must not fail to note that the day Oklahoma was thrown open to settlement two trunk lines of railroad crossed the territory from north to south, and a third line was about to be opened south from Caldwell. This without question is the most significant fact in Oklahoma history. Men are slow to change their residence if this involves also a change of climate. By moving along parallel lines men keep in about the same temperature to which they are accustomed. They can thus raise the same crops and engage in the same business. History is full of this influence of climate over the migration of people. The Swedes settle in Minnesota and the Dakotas because accustomed to the bleak winters of that latitude. Quite as naturally the German immigrant prefers the central section of the United States. Most of the states of the Union have been settled by a gradual movement of people from the region directly east of them. Thus Connecticut was originally occupied by New England Puritans, and Kentucky's first inhabitants were Virginians. But Oklahoma is an illustration of arrested development. Had it not been that this region was set apart for the Indians, the settlers of Arkansas who occupied the valley of the Kiamitia in 1817–1818 would have been the ones to first occupy and hold Oklahoma (sect. 22). But the Indian country was closed to settlement so long, that when the migration did come, the natural lines of travel had been changed. Settlers came from the North and from the South. Thus we have a peculiar blending of Northern and Southern blood, due entirely to the facts that three great lines of travel crossed the territory horizontally, and that no railroad entered from the east the region opened to settlement. The Atlantic and Pacific Railroad, the

much-heralded "Thirty-fifth Parallel Route" (sect. 181), still languished at Vinita, while the Choctaw route, Oklahoma's main east-and-west line of travel, did not reach the Panhandle of Texas until 1903. This intermingling of Northern and Southern blood in Oklahoma should produce a racial type peculiarly its own, for it has occurred nowhere else in America.

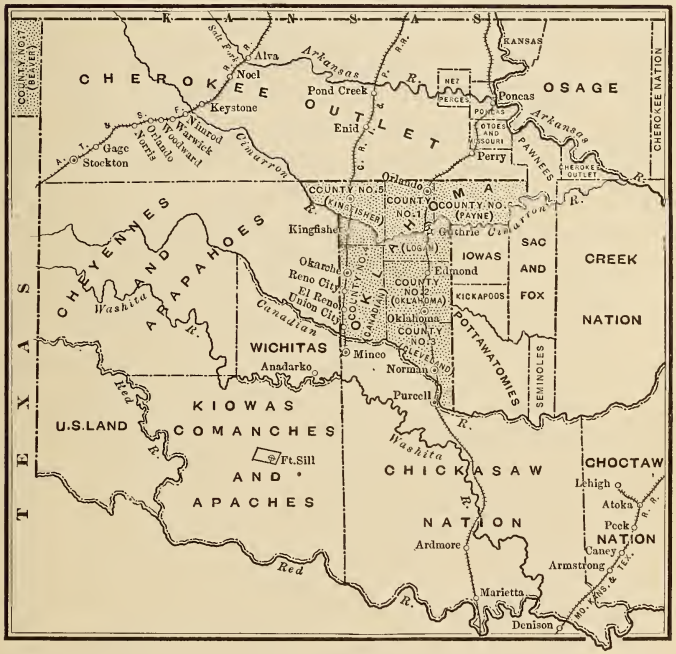
CHAPTER XVII

TERRITORIAL GOVERNMENT

196. Organic Act. The Organic Act, legally establishing Oklahoma Territory and providing a form of government for the people who had rushed into the country the preceding year, became a law on May 2, 1890. Almost as soon as the rush was over, "provisional" city governments were established, and during the winter much dissatisfaction was shown because there was no government for the entire territory. A convention met at Guthrie, July 17, and one again on August 20, 1889, to organize a provisional government as had been done in the cities. This convention was rent by the jealousies of rival towns, and nothing more than a protest to Congress emanated from its stormy sessions. But Congress took its own time, and the territory was without a government for over a year. The Organic Act (see Abbott's "Oklahoma Civics," p. 28), when it finally became law, provided that the President should appoint the governor, the secretary (secretary of state), and the judges of the supreme court. The governor was given authority to appoint all other executive officials. The legislature consisted of a council (senate) of thirteen members and a house of representatives of twenty-six. The supreme court judges also acted as district judges, and as the territory grew in size and population, the number of these judges was increased from three to five and then to seven.

197. Local Self-Government. The greatest advantage conferred upon the people of Oklahoma by the Organic Act was

local self-government. There were to be seven counties, designated by numbers until the people adopted names for them (see map, below). These were numbered and named as follows: one, Logan; two, Oklahoma; three, Cleveland; four



Oklahoma at the Time the Territory was Organized, showing Counties known by Numbers

Canadian; five, Kingfisher; six, Payne; and seven, Beaver. This last was No Man's Land, which, by a clause in the Organic Act, was attached to Oklahoma. President Harrison named, as governor, George W. Steele of Indiana, who entered upon his duties May 22, 1890. Governor Steele appointed

the first county officers, but at the first regular election their successors were chosen by the voters of the respective counties. The Organic Act extended the laws of Nebraska, where applicable, over the newly organized territory, and thus the self-constituted, provisional city governments were done away with.

198. Location of Public Buildings. On July 8 Governor Steele called a territorial election for August 5, 1890. The legislature was to assemble August 19, but was delayed because of the deaths of Representative C. M. Burke (August 8) and Milton W. Reynolds (August 9). Mr. Reynolds, the newspaper correspondent previously referred to (sect. 161), was one of the best known and most respected citizens of the new territory. He had been elected councilman (senator) from the territory at large, and thus his death necessitated another general election. When the legislature was finally assembled (August 29, 1890), it was found that while there were more Republicans than Democrats in both the council and the house, yet the Democratic and Farmers' Alliance members received enough Republican aid to control both houses. This chagrined Governor Steele, who was an ardent Republican. It was not, however, party disloyalty that had resulted in this combination, but a zealous effort to secure certain public buildings. Guthrie had been made the temporary capital of the territory, much to the disgust of Oklahoma City, so an arrangement was made whereby Oklahoma City was to get the Capitol; Norman, the state university; Edmond, the central state normal school; and Stillwater, the agricultural and mechanical college. Canadian County support was won over by agreeing to move the county seat from El Reno to a paper city, named Frisco. The Farmers' Alliance

members were induced to approve this agreement by making their only member in the upper house, G. W. Gardenhire, chairman of that body, and by electing A. N. Daniels, another Populist or Alliance man, speaker of the house of representatives. Republican delegates from Oklahoma City bolted their party organization to win the Capitol for their aspiring municipality. But Governor Steele vetoed all removal bills, while he signed all the measures locating educational institutions. The struggle for the location of the capital was most discreditable. Accusations of bribery and fraud, not always false, were charged against overzealous partisans of both towns. Later the Capitol was voted to Kingfisher, but this bill also met with executive disapproval. The question of the permanent location of the capital has never been settled, and now (1910) a referendum is pending which seeks to locate the state's seat of government at Oklahoma City, although the Enabling Act provided that the actual removal of the Capitol could not take place previous to 1913. Subsequent legislatures established normal schools at Alva and at Weatherford, and made arrangements to look after the deaf and dumb of the territory as well as the insane. Previous to statehood all convicts were sent to the Kansas penitentiary (see Abbott's "Oklahoma Civics," chap. xiii, for a full discussion of the state's educational, eleemosynary, and penal institutions).

199. Territorial Governors. Governor Steele was justly displeased at the conduct of certain members of the legislature. Disgusted with frontier life, he resigned before he had been in office a year and a half. On October 18, 1891, Judge A. J. Seay, who was one of the supreme court judges of the territory, succeeded him. Before he had completed

the term for which he was appointed, Grover Cleveland was reëlected President, and his administration was cut short, a Democrat, W. C. Renfrow, being appointed in his stead. Governor Renfrow was the first of the territorial governors to serve the full term of four years. He held the office from May 7, 1893, to May 24, 1897. Cassius M. Barnes of Guthrie succeeded Governor Renfrow. He too served a full term of four years. William M. Jenkins, also of Guthrie, succeeded Governor Barnes, April 15, 1901. He had been in office but a little over seven months when he was summarily removed by President Roosevelt because of dissatisfaction in connection with the administration of a sanitarium at Norman which had charge of the territorial insane. Thompson P. Ferguson, a newspaper man of Watonga, was next appointed governor. His administration reflected much credit upon himself and upon the territory, and was the third to extend over the four years' term for which each of the governors was appointed. He was in office from November 30, 1901, until January 5, 1906, and was succeeded by Frank Frantz, who had been captain in President Roosevelt's regiment of roughriders during the Spanish War. Governor Frantz served as chief executive of the territory until November 16, 1907, the day that statehood became a fact.

200. Subsequent Openings. The "rider" (sect. 191) which opened Oklahoma to settlement contained a clause providing for the appointing of a commission to negotiate with the Indians of Indian Territory for the return to the government of their surplus lands lying west of the 96th meridian. In July, 1889, following the opening, President Harrison appointed three commissioners to enter upon negotiations

Territorial Governors of Oklahoma

Geo. W. Steele (1890-1891)

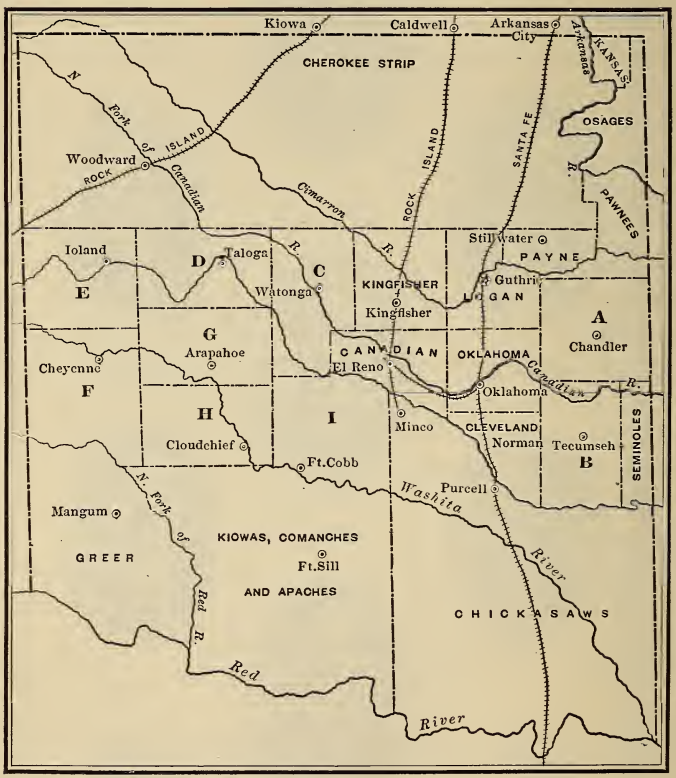
A. J. Seay (1891-1893) — W. C. Renfrow (1893-1897)

Cassius M. Barnes (1897-1901)

Wm. M. Jenkins (1901) — T. P. Ferguson (1901-1906)

Frank Frantz (1906-1907)

concerning these lands. They first attempted to induce the Cherokees to recede to the government that portion of the



Oklahoma in 1893, showing Counties known by Letters

Cherokee Outlet not occupied by minor tribes. But the commission met with many obstacles, and the Cherokee Strip was not opened for settlement until 1893. Meanwhile treaties were entered into which opened the Iowa, the Sac and Fox,

and the Pottawatomie-Shawnee reservations on September 22, 1891. The first row of townships east of the Indian meridian in this addition to the new territory was given to Cleveland, Oklahoma, and Logan counties, the rest of this region being designated as County A and County B. At the November election of 1892 the people of these counties named them Lincoln and Pottawatomie respectively (see map, p. 184). On April 19, 1892, the Cheyenne and Arapahoe country was opened to settlement in like manner. This was the region extending west from Kingfisher and Canadian counties to the 100th meridian. These two counties were rounded out by additions of territory on the west. The rest of the region was designated by letters[1] until names were adopted (see map, p. 184). In each of these openings, and in most of the others that have taken place in Oklahoma, each Indian on a given reservation was assigned a definite piece of land. After the Indians were all taken care of (that is, "allotted"), the rest of the land was thrown open to settlement. This was done at first by means of a run, but later the strife for the claims became so great that they were assigned by means of a lottery.

201. Cherokee Strip. Finally, the cattle kings of the Cherokee Strip were routed. The Cherokees ceded the Outlet back to the federal government for eight million three hundred thousand dollars, which was to be paid in five annual installments, beginning March 4, 1895. The surplus lands of the Pawnees and Tonkawas were also to be opened at this time. For thus receding these lands the two tribes were given one hundred and ten thousand dollars. As there

[1] The northern portion of Caddo County was long known as County I, although it was not opened to settlement until nine years later.

were no allotments in the greater part of the Cherokee Strip, this was much the largest opening in the history of Oklahoma. To keep "sooners" out, every one was required to register before "making the run," but this proved to be a farce. Registration officials openly sold certificates, and it subsequently developed that a settler could hold his claim just as well without such a paper as with it. The rush came September 16, 1893. It was merely a repetition of the previous "runs," only magnified in intensity and numbers. The boomers came from Kansas on the north and from what was then called "Old Oklahoma" on the south. The "sooner" and the pistol duel played an even more prominent part at this opening than at the previous runs. Land sharks ("land lawyers" they called themselves) had, through long experience, learned the ins and outs of the sort of law practice that is carried on in a land office. Contesting claims became a profession, and endless perjury made it frequently impossible for officials to even approximate justice. At this opening, as at those previously mentioned, cities sprang into existence in a day, and, unlike the mushroom mining camps of the West, they are still flourishing municipalities.

202. Land Lottery. In May, 1895, the Kickapoo country, a small district lying between the reservations of the Iowas and Pottawatomies (see map, p. 137), was thrown open to settlement. This was the last of the Indian lands to be opened with a "run." The stakes were so high and the inducement to lawlessness so evident, that before other reservations were opened to settlement a new and less tumultuous plan of distributing the farms was devised. At the Kiowa-Comanche-Caddo opening in the summer of 1901 the farms were distributed by means of a lottery. Two registration districts were

established, — one at Fort Sill, the other at El Reno. Each person who wished to draw for a claim had to make oath that he was entitled to hold land under the Homestead Law of the United States. His name was then placed on a card in a plain envelope. On August 6, 1901, the drawing began at El Reno. Over one hundred and sixty thousand persons had registered, while there were but twenty-six thousand claims. The envelopes, after being thoroughly mixed in a great drum-shaped wheel, were drawn by a blind boy. The person whose name came first had first choice of farms. It chanced to be a hardware clerk of Weatherford, James R. Wood. The second envelope contained the name of a Wichita telephone operator, Miss Mattie Beal. This plan did away with the wild scramble that had been the chief feature of previous openings, but it aroused the gambling instincts in many and was so arranged that many registered for claims who would never have thought of taking up a farm by the other method. But it was generally counted a success, and the government has since conducted numerous openings in other states in the same way.

203. Osage Nation and Greer County. With the opening of the Kiowa-Comanche-Caddo country Oklahoma Territory included all the western portion of the present state, for in 1893 the Osage nation was attached to Oklahoma for court purposes, and in 1895 Greer County was awarded to Oklahoma by a United States Supreme Court decision. It was explained in section 26 that Greer County was long claimed by Texas, because Marcy in his expedition left the main branch of the Red River in 1852 and followed the north fork of that stream west to the 100th meridian. By the treaty with Spain in 1819 the Red River was to be the

boundary between the United States and the Spanish domain west to the 100th meridian. The question was which branch of the stream was Red River. The Texas legislature in 1860 named this disputed territory Greer County, after a former Texas governor. Stockmen occupied the region in the early eighties, and in 1885 settlers began to occupy the valley lands. That year the federal government removed some of the settlers as intruders, but they immediately returned, and in 1888 the population of the county was sufficient for it to be organized under the laws of Texas. In the Organic Act (sect. 196), establishing a government for Oklahoma Territory, it was stipulated that the title to Greer County should be tested in the Supreme Court of the United States. This case went against Texas in 1895. The next year, by an act of Congress, Greer County was reorganized under the laws of Oklahoma, and in the fall of that year the citizens of the county for the first time participated in an Oklahoma election. This county, since statehood, has been subdivided so that it now forms three whole counties (Greer, Jackson, and Harmon)[1] and about one half of Beckham County.

204. The Free Homes Bill. David A. Harvey was the first delegate to represent Oklahoma at Washington, for under the terms of the Organic Act and according to well-established custom Oklahoma was allowed a delegate in the lower house of Congress. This delegate was given no vote, however. Mr. Harvey was elected in November, 1890, for the unexpired term of the Fifty-first Congress and for the full term of the Fifty-second. In 1892 Dennis T. Flynn

[1] The Hon. Judson Harmon, present governor of Ohio, Cleveland's attorney-general, was the lawyer who defeated Texas' claim to Greer County. So in 1909, when Greer County was again divided, the segregated portion was very appropriately named Harmon.

was chosen to succeed Mr. Harvey. He was reëlected in 1894, but was defeated in 1896 by James Y. Callahan, a Populist who received Democratic aid. In 1898 Mr. Flynn was again sent to Washington, and it was then that he rendered a great service to the citizens of Oklahoma by being chiefly instrumental in securing the passage of the Free Homes Bill (June 17, 1900). After the first opening homesteaders were required to pay for their farms at the rate of a dollar and a quarter an acre. This applied to all the lands open to settlement from the Iowa, Sac and Fox, and Pottawatomie reservations to the Cherokee Outlet. By the passage of the Free Homes Bill there were given outright to the struggling settlers of Oklahoma millions of acres that would otherwise have had to be paid for. Mr. Flynn remained in Congress until he refused to serve longer. He was succeeded by Bird S. McGuire in 1903, who held the office up to the coming of statehood.

Honorable Dennis T. Flynn, Author of the Free Homes Bill

205. School Lands. One of the questions most frequently discussed during the years that Oklahoma was a territory. was the disposal of the school lands. Two sections in every township (16 and 36) were given to support the common schools of the future state. At later openings two extra sections in each township were given,— one (13) for colleges, and another (33) for public buildings. Other sections were taken, wherever they could be found, to make up for the

sections not originally given, and also to replace either 16, 36, 13, or 33 when one of these had been allotted by an Indian. Thus in some portions of the territory there were vast tracts of school land that could not be taxed. The lessees of these state lands were anxious to obtain title to them, and this kept the school-land question almost constantly before the people. But the national government did not permit the sale of the lands until after Oklahoma had become a state. The first year after statehood (November, 1908) there was a referendum on this question, and the people voted by a large majority not to sell the lands. But the manifest injustice of holding lands in such large lots induced the second state legislature to sell all the indemnity lands and also all the college sections given the state by the Enabling Act.[1] This is now being done (March, 1910) (see Appendix A, Abbott's "Oklahoma Civics").

206. Single *vs.* Double Statehood. Hardly had the settlers rushed into Oklahoma at the time of the first opening when the agitation for statehood began, for the new territory soon had more people than many of the states. Numerous statehood conventions were held. At these the question immediately presented itself as to whether there should be one or two states carved out of the old Indian Territory. Those who advocated single statehood felt that the mines and vast oil interests of the eastern part of what is now the state of Oklahoma and the agricultural industries of the western half would naturally supplement each other. The advocates

[1] All the land in Oklahoma at the time the territory became a state was declared college land. There was in all one million and fifty thousand acres in this last gift. It includes immense areas in the Panhandle, and, because of this, was ordered sold at the time the indemnity lands were put upon the market.

of double statehood pointed out that small and sparsely settled New England states had two senators apiece, and that since each half of Oklahoma already had a larger population than many of these states, simple justice demanded that the Southwest should have this added representation. But Eastern interest could see no reason for having two small states and four senators where one state and two senators would suffice; and while the question of "single *vs.* double statehood" was warmly debated in the two territories, the men who controlled Congress never had any idea of allowing this region to become other than one state.

207. Party Expediency opposed Admission. Party expediency always plays a large part in most matters considered at Washington. Except for two years, soon after the organization of the territory, Congress had been controlled by Republicans. Since Oklahoma was a part of the South, it was assumed that its vote would be Democratic. It was maintained by those who favored statehood that the majority not only did not intend to allow Oklahoma and Indian Territory to come into the Union as two states, but it did not propose to have it become a state at all. One pretext or another was assigned for denying statehood to the people of these territories, but the real reason with many who opposed admission was a mere party matter. Yet there was another and more just reason for withholding complete self-government from this region. Indian land titles had to be established. The Indian governments had to be wound up. This would take time, and far-seeing men in Congress felt that it could best be done with the Indian country directly under the supervision of the federal government. Thus while Oklahomans fumed and clamored for statehood, Congress

proceeded in a somewhat dilatory way to place the Five Nations in condition to accept and profit by statehood when it came. It is well to bear in mind that while in 1890 the two territories (Twin Territories they were often called) had a combined population of 241,155,—a population twice as large as many of the states,—yet partisanship and statesmanship combined to keep Oklahoma out of the Union for almost a score of years. When finally admitted, the new state ranked fourteenth in population.

208. The Intruders. In 1890 there were no less than 179,321 persons living in the Five Nations. Not fifty thousand of these were Indians. Most of them were intruders, who were tolerated and permitted to live in the Indian country, but resided there without legal sanction. The Indian leaders, who opposed the coming of the railroads, were true prophets: just as soon as railroads came into the territory, white people came with them. The McAlester coal mines, which were discovered in 1869, yielded one of the best grades of coal to be found in the Middle West, and the industry flourished. This brought thousands of white miners into the Choctaw nation. The Indians were quick to learn that they could get more out of their farms by leasing them to white tenants than by farming the land themselves. Therefore thousands of white farmers came into the Indian country, and while it was against the Indian law and contrary to the federal treaties, yet the Indians encouraged these intruders. It has been explained that the Indian law did not apply to white men (Abbott's "Oklahoma Civics," sects. 53, 55). The Indian governments spent little or no money on public improvements, and conditions in the Five Nations were in a most chaotic state. The United States marshals could

enforce negative laws; that is, they could arrest a man for committing a crime, but there was no law for collecting taxes or for the building up of the territory. Manifestly so many thousands of white men could not continue to live without some form of government, and the federal authorities were at last compelled to step in and alter conditions as fast as possible.

209. The Dawes Commission. On November 1, 1893, a committee of three was appointed by President Cleveland to induce the Indians of the Five Nations to take their lands in severalty and to surrender their tribal governments. This committee was headed by ex-Senator Henry L. Dawes of Massachusetts, and has been known ever since as the Dawes Commission. After much difficulty treaties were obtained from each of the Five Civilized Tribes, by which they agreed to take their lands in severalty. Because of the total lack of a governing authority for the white people of Indian Territory, the Dawes Commission acted as a kind of executive and legislative head for them as well as for the Indians. It assumed general supervision of all matters in the Five Nations, although the Indian governments still acted in purely tribal affairs.

210. The Tribal Rolls. To assign a definite plot of ground to every man, woman, and child in the Five Nations was no small task. First of all, the tribal rolls had to be made up, that is, every Indian in the Civilized Tribes had to prove his right to share in tribal lands. This headright, as it was called, often had to be tested in the federal courts, and years were consumed in making up the rolls. The enrollment began in 1898, and even yet (1910) new claimants for land appear, and frequent efforts are made to compel the Dawes

Commission to reopen the rolls, which have been nominally closed since June 30, 1908.

211. Laws of Arkansas extended over Indian Territory. By the terms of the Curtis Act the laws of Arkansas were extended over the Indian Territory in 1899. This was the first positive law ever enacted for the white population of the Indian nations. Under it cities were incorporated and municipal taxes collected to support the city governments and for school purposes. But in the rural sections, because there was no county or township organization, the Arkansas law would not apply, and here there was but little improvement over the primitive conditions of the Indian governments. Streams were not bridged, roads were not built, and without taxes schools could not be maintained. While rural Oklahoma was progressing by leaps and bounds, Indian Territory, outside the incorporated cities, was more backward than New England before the Revolution.

212. Indian Territory School System. But the Curtis Act also established a sort of free-school system for the white children of Indian Territory. This was necessary because the Indian schools could in no way accommodate the large numbers of white children who began to demand admission in the early nineties. Congress allowed the Dawes Commission funds with which to establish schools for the white children of the intruders who had come to dwell in Indian Territory. In 1899 John D. Benedict was appointed supervisor of education for the Indian Territory, having charge of both the white and Indian schools in the Five Nations. The Indian schools were maintained exclusively for Indians. White or Indian children could attend the rural day schools, which were maintained partly by a payment of

tuition and partly from the funds appropriated by Congress. Separate schools were provided for colored children. Federal aid was not extended to the incorporated towns, for free schools could be maintained there by local taxation if the citizens so desired. The Indian schools of the Five Nations and a few rural day schools were maintained under Mr. Benedict's supervision until February, 1910.

213. The Sequoyah Convention. The only determined effort made by Indian Territory to secure statehood, independently of Oklahoma Territory, was the so-called "Sequoyah constitutional convention." Delegates from the Five Nations met at Muskogee in July, 1905. They framed a constitution for this portion of Oklahoma, naming the prospective commonwealth "Sequoyah," in honor of the famous Cherokee scholar of that name (sect. 89). William H. Murray represented the Chickasaw nation in this convention, and Charles N. Haskell (sect. 219) was one of the most energetic delegates. The constitution which this body framed and sought to have Congress recognize was given scant consideration at Washington. Apparently the convention's work came to nothing, but in one respect it was a material benefit to the political leaders of the eastern part of the future state. Heretofore there had been little concerted political action among the white men of the Civilized Tribes. This convention gave them an opportunity to get together. The next year, when the convention met to frame a constitution for the united territories, a group of delegates who had worked together in the Sequoyah convention easily controlled this later and more serious work of constitution building.

CHAPTER XVIII

STATEHOOD

214. Struggle for Statehood. Four important questions agitated the people of Oklahoma during the territorial days: (1) the Free Homes Bill (sect. 204); (2) the disposal of school lands (sect. 205); (3) single *vs.* double statehood (sect. 206); (4) whether the territory was ever to be given statehood in any form. The Sequoyah convention (sect. 213) was the only determined effort Indian Territory put forth to gain statehood, but in Oklahoma, or the western part of the territory, statehood conventions were held almost every year. Practically every territorial assembly,—political, commercial, or religious,—before it adjourned, adopted ringing resolutions demanding statehood.

215. The Enabling Act. Finally, it became almost a national scandal to continue longer to refuse self-government to a million and a half of American citizens. President Roosevelt, with broad-minded statesmanship, pronounced unequivocally for statehood for Oklahoma, Arizona, and New Mexico. In 1905 the National Press Association met at Guthrie. While in the territory the editors were provided with a special train and were given an opportunity to see the unprecedented progress in all parts of Oklahoma. When they returned to their homes in the states, almost to a man they became earnest and efficient advocates of statehood for Oklahoma. It was these influences that forced through Congress the next year an Enabling Act for Oklahoma.

216. Omnibus Statehood Bill. Thus, as a result of pressure from without, Congress came to the aid of Oklahoma's friends in that body, and a statehood bill, after sixteen years of waiting, was finally forced through both houses. This bill was signed by President Roosevelt, June 14, 1906, and was called the Omnibus Bill because it united Oklahoma and Indian Territory as one state and Arizona and New Mexico as another state. But there was so much objection from these last-named territories that a provision was added by which the people of each territory could first vote upon the question as to whether they should be thus joined. Both territories did so and promptly rejected the offer of statehood in this form. Oklahoma and Indian Territory had no such objection to being united, and the formation of a constitution was proceeded with, no vote being taken. The Enabling Act provided for a constitutional convention of one hundred and twelve members,—fifty-five delegates from the territory of Oklahoma, fifty-five from the Indian Territory, and two from the Osage nation. In Oklahoma, districts were designated by Governor Frantz, Chief Justice Burford, and William Grimes, secretary of the territory. Each district was entitled to send one delegate to the constitutional convention. Indian Territory was districted by Tams Bixby, commissioner of the Five Civilized Tribes, and two judges of the United States district courts in the Indian Territory (see Abbott's "Oklahoma Civics," Chap. IV, sects. 59–60, for provisions of Enabling Act).

217. Election of Delegates. The campaign for delegates to the constitutional convention was spirited. Men who aspired to represent the various districts were tested chiefly upon the following questions: (1) How would they vote upon

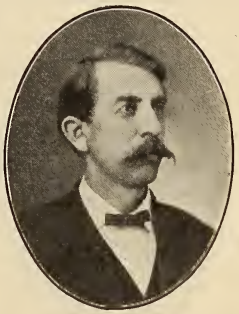
prohibition? (2) Were they in favor of segregating the negroes when traveling? (3) How would they vote when it came to regulating public-service corporations, and were they for or against other progress legislation, such as the initiative and referendum and stringent regulation of public-service corporations?[1] The election (November 6, 1909) gave the

City Hall, Guthrie
The Constitutional Convention met here in 1906–1907

Democrats an overwhelming majority; ninety-nine districts returned Democrats and only twelve Republicans were elected. One delegate was classed as Independent. The large Democratic majority was due to many reasons. The Republican party was charged with the long delay in obtaining statehood, and there was no little resentment against its candidates on this account. It was believed that such race legislation as was

[1] See Abbott's Oklahoma Civics, chap. vii, for initiative and referendum, and chap. xiv for state corporation law.

desired would be more apt to be written into the constitution by Democrats than by Republicans. Finally, progressive ideas advocated by the radical or Bryan wing of the Democratic party are quite generally accepted by both political parties in Oklahoma. Thus the Democratic aspirants in many districts obtained a large following from the Republicans. Upon the question of prohibition and the disposal of the school lands the parties divided. The delegates met at Guthrie, November 20, 1906, and it was soon evident that the progressive Democrats were in control.



Honorable William H. Murray, President of the Constitutional Convention

218. William H. Murray. The convention elected William H. Murray, of Tishomingo, president. Mr. Murray had been vice president of the Sequoyah constitutional convention (sect. 213), and the political friends he won there now stood him in good stead. That he is a capable presiding officer was made evident by his presidency of the constitutional convention and his speakership of the first house of representatives after the coming of statehood. He is not adverse to using the gavel, if necessary, to crush factious opposition. He is an intermarried Chickasaw, a lawyer, and a farmer, and withal a persuasive speaker. His reading has been extensive, and possibly most of the progressive measures found in the constitution were due to his influence and to that of Charles N. Haskell, the Democratic floor leader in the convention.

219. Charles N. Haskell. It was upon the shoulders of Charles N. Haskell, since elected the first governor of the

state, that the chief burden of framing the constitution fell. Governor Haskell possessed marked ability as an organizer and leader. He it was, with Mr. Murray's assistance from the chair, who made the large Democratic majority a unit and forced through the initiative and referendum, the stringent regulation of public-service corporations, and the selecting of United States senators by direct primary,—measures that have made Oklahoma, since statehood, one of the most progressive of all Anglo-Saxon commonwealths. And when it came to selecting county seats for the thirty-nine counties into which the Indian Territory was divided, and to cutting up the large counties upon the west side, Governor Haskell was easily leader. This was a mere question of expediency. Town fights and local jealousies alone were to be dealt with, and here the future governor adjusted matters so satisfactorily, that, notwithstanding the fact that each county was free to alter the decision of the constitutional convention, yet this has been done in but two or three counties (consult Abbott's "Oklahoma Civics," p. 20). His genius for organization was a little later made apparent, for so well had he made over the map of the state that he himself was nominated for governor in an apparently hopeless fight, and the constitution he was largely instrumental in framing was carried by a large majority, and with its acceptance the Democratic candidates were very generally successful throughout the state.

Governor Charles N. Haskell

220. Prohibition. The chief fight in the constitutional convention was over the question of prohibition. The Enabling Act had required that the sale of liquor be prohibited in the Indian Territory for twenty-one years. This was in harmony with the national government's well-known policy of protecting its Indian wards from the evils of the saloon. The pro-liquor element in Oklahoma Territory insisted that saloons be licensed in the western half of the state, no matter what was required in Indian Territory. The question was hotly debated, and in the convention state-wide prohibition narrowly escaped defeat. It was finally decided to submit the constitution, as drafted by the convention, to the electorate of the new state for their acceptance or rejection, and to submit a separate prohibition clause. Thus the instrument could be accepted with or without prohibition. The constitution carried by a majority of 107,274, while the prohibition provision had a majority of 18,103.

221. The Election. The vote upon the constitution and the election of state officers was held September 17, 1906. Township, county, and state officials were nominated throughout the entire state. Frank Frantz, the territorial governor, was nominated by the Republicans, and, as explained above, Charles N. Haskell was the Democratic nominee. Mr. Haskell made his campaign upon his record in the constitutional convention and in support of the prohibition amendment. His vote was 137,641 against 110,296 for Mr. Frantz. The Democratic state officials were all successful (for names see Appendix A), and Democratic county candidates were very generally selected throughout the state. The Democrats had a large majority on a joint ballot in the legislature, and this insured the selection of men of that political party as United States senators.

222. Statehood. A copy of the completed constitution was sent to President Roosevelt and by him submitted to his attorney-general, Charles J. Bonaparte, to see if it was in harmony with the Constitution of the United States and the Enabling Act for Oklahoma. The document was declared to be in accordance with these, and on Saturday, November

Temporary State House, Guthrie

16, 1907, Oklahoma was proclaimed the forty-sixth state of the American Union. That day Governor Haskell and the newly elected state, county, and township officials assumed their offices.

223. First State Legislature. Two weeks after the inauguration of the state government the first state legislature met at Guthrie. This body proceeded to put the newly adopted constitution in force throughout the commonwealth. The measures adopted and the supplementary acts of the

second state legislature, which met in January, 1909, are discussed in Abbott's "Oklahoma Civics," which accompanies this volume.

224. United States Senators. Robert L. Owen, a wealthy Cherokee, who had had wide experience in tribal matters at Washington and in the Indian Territory, was chosen one of the senators for the new state. Thomas P. Gore, a young man who, although blind, had made a brilliant reputation

Robert L. Owen

Thomas P. Gore

Oklahoma's first United States senators

as a state senator and orator, was chosen as his colleague. Senator Gore drew the short term and was reëlected for the full six years' term by the second legislature. Although he has been at Washington hardly two years, he has already gained national fame as an orator and statesman.

225. Congressmen. The Enabling Act gave to Oklahoma five Congressmen. One of these, Bird S. McGuire (Pawnee), had already served as delegate from Oklahoma Territory. The other four were Democrats,—Elmer L. Fulton (Oklahoma City), James S. Davenport (Vinita), Charles D. Carter (Ardmore), and Scott Ferris (Lawton). The second congressional

election returned three of these gentlemen, Messrs. McGuire, Carter, and Ferris. Richard T. Morgan (Woodward) and Charles S. Creager (Muskogee), both Republicans, were elected in the second and third districts respectively.

226. Harmon County. The Oklahoma constitution allows a larger measure of local self-government than probably any of the other forty-five similar instruments. By it citizens of one county can establish another county when they see fit, provided certain requirements of the constitution are complied with. In the summer of 1909 Harmon County thus seceded from Greer County (see map, p. viii). The constitution also permits each county, within certain limitations, to select its own county seat, and many vigorous elections between rival towns have been held to decide this question. Happily the provisions of the constitution are so framed that the bloody feuds which have occurred over county-seat fights elsewhere have been avoided here (see Abbott's "Oklahoma Civics," sect. 32).

227. Initiative and Referendum. The constitutional provision for direct legislation has already been invoked five times. At the first general election five "state questions" were submitted to the electorate. State question No. 1 had to do with the repeal of the agency feature of the prohibition law, known as the Billup's Bill. No. 2 was to institute the Torrens system of land transfer. No. 3 was an attempt to so alter the constitution that the Capitol could be removed from Guthrie previous to 1913, the time stated in the Enabling Act. No. 4 was termed the "New Jerusalem." It was to further the project of locating the state Capitol and most of the state's institutions at a new and perfect city to be established at the geographical center of the state. No. 5, if passed

upon favorably, would permit the sale of the school lands. The first four were submitted by the state legislature; the last one was brought before the voters by initiative petition. Every one of these measures was defeated except the "New Jerusalem." It was merely the registration of public opinion upon a state policy and was declared carried. But the second state legislature failed to take any action looking to the establishment of such a central governmental city. So many electors failed to vote upon the referenda submitted to them, that it is difficult to say that the state's first experiment with direct legislation was an unqualified success. Yet the initiative and referendum is generally regarded as a wholesome restraint upon the state legislature. It is also believed that in time it will be a powerful stimulus for education, and will interest citizens in governmental matters that materially concern them.

APPENDIX A

FIRST STATE OFFICERS

Governor, Charles N. Haskell $4500
Lieutenant Governor, George W. Bellamy 1000
Secretary of State, William Cross 2500
Auditor, M. E. Trapp 2500
Attorney-General, Charles West 4000
Superintendent of Public Instruction, E. D. Cameron 2500
Treasurer, James A. Menifree 3000
Examiner and Inspector, Charles A. Taylor 3000
Commissioner of Labor, Charles L. Dougherty 2000
Insurance Commissioner, J. T. McComb 2500
Chief Mine Inspector, Peter Henraty 3000
Commissioner of Charities, Miss Kate Barnard 1500
Corporation Commissioners: J. E. Love, J. J. McAlister, A. P. Watson 4000
President of Board of Agriculture (eleven farmers), J. P. Connor 2500
State Printer, Clint Worral 2500
State Board of Public Affairs: Roy V. Hoffman, R. J. Allen, T. A. Chandler 3000
Senate (forty-four members). Six dollars per day for sixty days; after that two dollars per day.
House of Representatives (one hundred and nine members). Salary same as that of senators.
President pro tempore of Senate: First Legislature, Henry S. Johnston; Second Legislature, J. C. Graham.
Speaker of the House of Representatives: First Legislature, William H. Murray; Second Legislature, Ben. F. Wilson
Supreme Court Judges: R. L. Williams, John B. Turner, M. J. Kane, S. W. Hayes, Jesse J. Dunn 4000
Clerk of Supreme Court, H. L. Campbell . . . . . (fees)
Judges of Criminal Court of Appeals: Henry M. Furman, Thomas B. Doyle, H. G. Baker 3500

UNITED STATES SENATORS

Thomas P. Gore, Robert L. Owen.

REPRESENTATIVES

Bird S. McGuire, Elmer L. Fulton, James S. Davenport, Charles D. Carter, Scott Ferris 1907–1909

Bird S. McGuire, Richard T. Morgan, Charles S. Creager, Charles D. Carter, Scott Ferris. The names occur in the order of the districts they represent 1909–1911

APPENDIX B

TERRITORIAL GOVERNORS

George W. Steele .	1890–1891	W. M. Jenkins . .	1901
A. J. Seay . . .	1891–1893	T. B. Ferguson . .	1901–1905
W. C. Renfrow . .	1893–1897	Frank Frantz . .	1905–1907
C. M. Barnes . .	1897–1901		

DELEGATES IN CONGRESS

David A. Harvey .	1890–1893	Dennis T. Flynn .	1899–1903
Dennis T. Flynn .	1893–1897	Bird S. McGuire .	1903–1907
James Y. Callahan .	1897–1899		

CHEROKEE GOVERNORS (PRINCIPAL CHIEFS)

John Ross (Ko-o-wes-ko-o-we) . . 1839–1866

William P. Ross . . . . . 1866–1867 (unexpired term of John Ross)

Lewis Downing 1867–1872

William P. Ross . . . . . 1872–1875 (unexpired term of Lewis Downing)

Charles Thompson (O-o-cha-la-tah) 1875–1879

D. W. Bushyhead	1879–1887	
J. B. Mayes	1887–1891	
C. J. Harris	1891–1895	(unexpired term of J. B. Mayes)
S. H. Mayes	1895–1899	
T. M. Buffington	1899–1903	
W. C. Rogers	1903	(still recognized as Cherokee Principal Chief by the federal authorities)

APPENDIX C

GENERAL CENSUS RETURNS

Oklahoma Territory

	Indian	Colored	Total
1890	13,177	2,973	78,475
1900	11,945	18,831	398,331
1907	13,087	31,511	733,262

Indian Territory

1890	51,279	18,636	180,182
1900	52,500	36,853	392,060
1907	61,925	80,649	681,115

Total population of Oklahoma the day statehood was proclaimed (November 16, 1907) was 1,414,377.

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OKLAHOMA SCHOOL CIVICS

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PREFACE

The great length of the Oklahoma constitution forbids quoting and commenting upon it section by section. The aim of this book is to give pupils in the schools of Oklahoma a complete working knowledge of the institutions of the state without burdening them with unnecessary details. It is published in connection with and becomes a part of Boynton's *School Civics* to which frequent reference is made. These references should be looked up, as they form a part of the text in the same manner as references to the constitution of the state.

References to the constitution are given by article and section, e.g. Art. VI, sect. 3; to *School Civics* by pages, e.g. Boynton, pp. 293–307; and to passages in this book by chapter and section, e.g. chap. x, § 151.

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OKLAHOMA SCHOOL CIVICS

CHAPTER I

THE CIVIL DISTRICT: IN OKLAHOMA, THE MUNICIPAL TOWNSHIP

1. Charters of Liberty. The four great charters of Anglo-Saxon liberty are: Magna Charta (1215), the Bill of Rights (1689), the Declaration of Independence (1776), and the Constitution of the United States (1789). But the rights which these epoch-making documents convey would be materially lessened were it not for the great body of common law (the law of custom and of usage), founded upon equity and justice, and for the boon of local self-government.

2. Local Government Important. While it is extremely important that we have good laws wisely administered in state and nation, the individual is deeply concerned with the laws and with their administration in the city, township, and county in which he resides (Boynton, p. 285). It is the laws of these lesser political divisions of government which regulate the daily life, and with which the citizen comes into daily contact. We will now consider in the smallest governmental division the function of the state in its relation to these local rights of self-government.

3. The Civil District was established in some form in every one of the colonies at an early date (Boynton, chap. xix, pp. 288–291). Its form and method of organization was brought

to America from England. It is the smallest and least complex of all our political machinery. In New England it is called a town, — a small country district, — which we in Oklahoma term a municipal township (Boynton, chap. iii, pp. 45–52, for full discussion of town, parish, county in America).

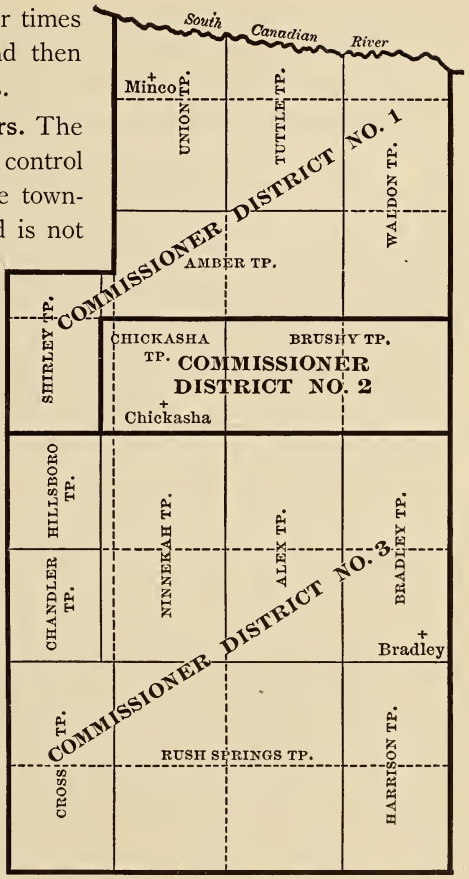
4. The Municipal Township in Oklahoma is exactly the same civic organization as the town in New England. There is this difference, however, that in Oklahoma the administration of the municipal township is clearly republican instead of a pure democracy, as in the case of a New England town, and its governmental functions are more limited. In Oklahoma the name "township" or "municipal township" is quite as confusing as the New England name "town." This arises in part from the fact that the federal government has given the name "congressional township" to a tract of country just six miles square, a convenient unit for surveying the state. A municipal township may be larger or smaller than a congressional township, and has nothing to do with the latter, although in dividing a county into municipal townships the lines established by the government are frequently used, in which cases the area of the two kinds of townships coincide.

5. Township Officers. As has been stated, the township is the least complex of all our political machinery. In the sparsely settled country districts and in the small villages which are brought under this system there is little need of complex government. The chief authority in the township is the township board. This board is the legislative assembly of the township. It consists of three members: (1) the trustee, or chairman, who is the executive official of the township; (2) the treasurer, who has control of the funds; and (3) the clerk, who keeps the records of the board. These men seldom

meet more than four times during the year, and then only for a few hours.

6. Duties of Officers. The trustee has general control of the affairs of the township when the board is not in session, has general supervision of the road overseers, and also is assessor of the township. The treasurer has charge of the funds of the township. The clerk keeps the records.

7. Township divided into Road Districts. Every township is divided into road districts, each under the supervision of the road overseer. The road overseer has power to warn (call) out citizens to work on the roads in order that the roads may be kept in as good repair as possible. It is also his duty to collect the poll tax and to keep the roads



MAP OF GRADY COUNTY

(Showing congressional and municipal townships and commissioner districts)

and bridges of his district in good condition. The township trustee may act at any time in place of the road overseer.

8. Initiative and Referendum. The legislative and executive departments of township government are combined and placed in the hands of one set of officials, the township board. The legislative acts of the board, however, are subject to review by the voters of the township by means of the referendum. Whenever the board fails, or refuses, to enact desired legislation it can be forced to do so by initiative petition (Art. V, sect. 5). In Chapter VII a detailed explanation of the initiative and referendum may be found. It is a part of the legislative machinery of the township, supplementary to the work of the township board.

9. Township Judiciary. There are two justices of the peace in every township, as well as in each city of the first class (Boynton, p. 279). Under the constitution each justice has jurisdiction in civil cases up to $200, and in criminal cases where the fine does not exceed $200, or imprisonment in the county jail for not exceeding thirty days, or both such fine and imprisonment (Art. VII, sect. 18). This jurisdiction is coextensive with the county. The justice also has power to examine and commit prisoners in all cases of felony. Every justice of the peace has a constable to enforce his decisions, to serve writs, and to act as general peace officer of the township. In a justice court six men constitute a jury. In July, 1910, the county commissioners will divide each county into six justice of the peace districts. One justice will be elected for each district. If necessary, however, additional justices may be provided but must not exceed one for each voting precinct in the county.

CHAPTER II

CITY GOVERNMENT

10. Municipalities. Where the population becomes dense, as in villages and cities, it has been found necessary for the best interests of all concerned to have a more detailed organization than is necessary in the municipal townships. In large cities government is found in its most complex form. The various state governments classify such densely populated communities differently, according to the numbers living in such communities. The smallest division is usually called a village, the next larger a town, and the largest a city. Cities are again classified, usually into three groups, namely, first, second, and third, the third-class city being the smallest (Boynton, chap. xx, pp. 293–307).

11. Oklahoma Municipalities. In Oklahoma all densely populated communities are called either cities or towns. There are no villages recognized by law in Oklahoma. Municipalities are of two classes: those of two thousand population are called cities of the first class; those of less than two thousand population are called towns. For the incorporation of towns no special population is required. When certain provisions have been complied with by a densely populated community of less than two thousand inhabitants, it is declared a town by the board of county commissioners. When a densely populated community of more than two thousand inhabitants has met the requirements of the general law, it is declared a city by the governor of the state. Any city containing a population

of more than two thousand inhabitants may frame a charter for its own government, consistent with and subject to the constitution and laws of the state (Art. XVIII, sect. 3). It is then termed a "charter city."

12. How a City forms its Own Charter. A convention of freeholders (men who own real estate) is elected to draw up a constitution or charter for the city. This body is composed of two men from each ward. This charter is submitted to the voters of the city. If a majority of those who vote upon the question of accepting or rejecting the charter drawn up by the convention are in favor of its adoption, it is then sent to the governor for his approval. If it is found to conform with the statutes and constitution of the state, and the governor approves, it then becomes the constitution of the city, defining what may and may not be done. If the charter is approved, one copy is filed with the secretary of state and one is recorded with the register of deeds of the county in which the city is located, and is then finally deposited in the archives of the city.

13. City Charters: Amendments. Amendments to a city charter may be begun as follows: first, by the city council; second, by a petition signed by twenty-five per cent of the voters. If the second method is adopted, an election must be called by the mayor within thirty days after the petition has been filed with him. At this election the voters decide whether or not a revision of the charter shall be made. If a majority vote in favor of such a revision, the work proceeds; if not, the matter is dropped. This provision and the one in the preceding section was put into the constitution so that Oklahoma cities could adopt the *commission system of city government*, if they so desired. Commission government

abolishes all wards and councilmen. A commission, or committee, usually of five men, is elected to serve the city much as a board of directors controls a large corporation. The members of this commission are paid large salaries and devote all their time to the city's interests. Government by commission is an effort to abolish the inefficient and often corrupt city governments that are found everywhere in America. Two Oklahoma cities, Tulsa and Ardmore, have already (1909) adopted charters and are operating under some form of the commission system. All other Oklahoma municipalities still adhere to the general law, which is explained in the following paragraphs.

14. City Wards and Councilmen. When the governor issues a proclamation declaring a certain community a city, he defines the wards (subdivisions of the city), not less than four, for the purpose of the first election. These wards may be changed after the first election, by the city councilmen, if occasion requires. The number of people residing in each ward is the same as nearly as possible. The wards serve as election precincts and are the basis of representation in the city council and school board. Each ward is entitled to two councilmen, elected for a term of two years alternately. By this method at least one half of the council has had experience in the administration of city affairs.

15. The City Council. All legislative authority of the city is vested in the city council, with the exception of what law-making power is reserved to the mayor and the people. The mayor presides over all meetings of the city council and has a vote in the case of a tie, and also exercises veto power over all acts of the city council. The city council has power to levy taxes, audit and pay bills against the city, borrow money on

the city's credit, impose license taxes, erect necessary public buildings for the city's use, condemn land for public purposes, and invest in public business for the benefit of the city. Waterworks, lighting plants, cemeteries, represent such investments.

16. The Initiative and Referendum. Like the municipal township, the city has the power of initiative and referendum (Art. XVIII, sect. 4 a). Through this power the voters of the city may reject the action of their city council or may force that body to pass needed legislation. The constitution requires, however, that every petition for initiative or referendum in the government of the city shall be signed by a number of the qualified voters residing within the city, equal to twenty-five per cent of the total number of votes cast at the next preceding election, and that this petition shall be filed with the mayor (Art. XXIII, sect. b). Thus the legislative authority of the city is vested, first, in the city council; second, in the mayor, by reason of his vote in the case of a tie and his power of veto; third, in the people, by means of the initiative and referendum.

17. The Mayor. The chief executive of a city of the first class is called the mayor (Boynton, pp. 296–297). It is his duty to see that the laws enacted for the government of the city are enforced. He presides at all meetings of the city council and exercises the right of veto over measures enacted by the council. After an ordinance has thus been vetoed it can only become a law by passing it over the veto by a two-thirds vote of the council. With the consent of the council, the mayor can grant reprieves and pardons for offenses arising under city ordinances. He can also suspend city officials for incompetency or neglect of duty until the council acts thereon. The mayor appoints the park commissioner, the water and

sewer commissioner, the light commissioner, the city physician, the police officers (excepting the chief of police), and such other officials as the needs of the city demand. His salary is fixed by city ordinance, is generally small, and is not considered as an adequate compensation for services rendered. In many cities throughout the country no compensation whatever is attached to the office of mayor or member of the common council. Service thus rendered is usually considered a matter of local patriotism.

18. The City Clerk. It is the duty of the city clerk to keep a record of all proceedings of the council. He signs all orders to pay out city funds. Thus he transacts for the city the duties that, in the state, are divided between the secretary of state and auditor. The term of the city clerk is two years. The salary varies widely, depending upon the size of the municipality.

19. The City Treasurer. All funds belonging to the city are under the control of the treasurer. Like the township treasurer, he does not collect the general tax. The general taxes are paid to the county treasurer. The only tax money that is paid directly to the city treasurer is for the occupation tax levied upon certain classes of business in the city, the dog tax, the peddler's tax, the street hawker's tax, etc. Such special taxes are created by ordinance and are specially devised to protect the people against imposition. Term two years. The salary depends upon the size of the city.

20. The City Attorney. The city attorney is elected by the people for a term of two years. The attorney is expected to advise all city officials upon legal matters that relate to the city. He defends all lawsuits against the city, brings action in the name of the city, and prosecutes all offenders tried in the police court.

21. The City Marshal. The official title of the chief of police is city marshal. He is elected by the people for a term of two years and has general control of the peace of the city. He is subject to the orders of the mayor only. In most cities in other states the mayor appoints the chief of police. This custom is more apt to obtain harmony between the chief of police and the mayor, and harmony makes for the best municipal government, a condition not always true in Oklahoma.

22. The Assessor. Every city of the first class chooses an assessor, who lists the property of the citizens for taxation as does the trustee in a municipal township. The assessor is the only official in cities of the first class elected for but one year. Salary three dollars per day for the time he is at work.

23. The Street Commissioner. The street commissioner has charge of the streets and sidewalks of the city. He attends to all grading, draining, ditching, builds cross walks, and has general supervision of all thoroughfares within the city limits. Term two years.

24. The Judicial Authority. The police judge, who is elected for a term of two years, is vested with the judicial authority in the city. Before him are arraigned the petty offenders against the peace and dignity of the municipality. The police judge determines the meaning of the city ordinances, and cases brought before him are never tried by jury. In cities of more than twenty-five hundred inhabitants two justices of the peace are elected. These justices have been held by the supreme court to be county officials, and are elected at the regular county election in November instead of at the city election in April. The reason for this is that all justices of the peace, from whatever district, have jurisdiction in all cases not exceeding two hundred dollars arising in the county.

A constable is elected for each justice chosen. Like incorporated towns, cities of the first class of less than twenty-five hundred population elect but one justice; cities of over twenty-five hundred population elect one extra justice for every ten thousand population in excess of the twenty-five thousand.

25. Incorporated Towns. The general statute provides for incorporating towns in Oklahoma. Before a town can be incorporated it must be surveyed, mapped, and the census taken. The petition for incorporation is made to the county commissioners (see chap. iii, § 46), and must be signed by one third of the qualified voters residing in the town. If a majority of the citizens vote for incorporation, the board of county commissioners will issue an order declaring it a town. No special population is required, but it must be sufficient to support such a government as is provided by the law.

26. Oklahoma Town Government. The town is divided into not less than three and not more than seven districts or wards. Each district elects one trustee. The trustees form the town's legislative assembly, which is known as the board of trustees. The board chooses one of its own number for president, and he thus becomes the chief executive officer of the town. At the time of his election, the first Tuesday in April, there is also elected a clerk, assessor, treasurer, marshal, and justice of the peace, whose term of office is one year each. Their duties are the same as those of like officials in other departments of government. In towns the same person may be both clerk and assessor at the same time. The right of initiative and referendum is reserved to the town.

27. Public-Service Corporations. One of the greatest difficulties arising under city governments is the control of public-service corporations. The constitution of the state gives

the city explicit control over her franchises, which control, if properly exercised, will go a long way in the solution of this most vexatious problem in municipal administration. The constitution forbids that any city or town shall ever grant, extend, or renew a franchise without the approval of a majority of the qualified voters concerned, who shall vote upon the question at a general or special election; and no franchise shall be granted, extended, or renewed for a longer term than twenty-five years (Art. XVIII, sect. 5 a).

28. Public Utilities. It is becoming more and more the custom for cities to conduct certain lines of business that are, in the nature of things, monopolies. This is done for the benefit of the entire community. Public utilities most commonly under the control of the city are waterworks, lighting plants, sewers, drains, street railways. The state constitution makes it possible for cities to enter a much wider field. Every municipal corporation within the state has the right to engage in any business or enterprise which may be engaged in by a person, firm, or private corporation (Art. XVIII, sect. 6 a).

CHAPTER III

THE COUNTY

29. The County (Boynton, pp. 48–52). Like the municipal township, the county is a civil district. By this is meant that it is a governmental convenience. In most states its boundaries can be changed, or its very existence terminated, at the will of the legislature. The constitution of this state sets limitations (Art. XVII, sect. 4). It will be seen that the governments in the forty-six commonwealths composing the Union make them unitary states (Boynton, p. 27), and that the federal government has no such powers over the boundaries of the respective units (states) of which it is composed. The states are indestructible just as the Union is indissoluble, i.e. it cannot be legally destroyed (U. S. Supreme Court definition of the nature of the Union).

30. The County in Oklahoma. In Oklahoma the township has in no respect the powers of a New England town acting through its town meeting (Boynton, p. 47). Also the county commissioners lack in many material respects the authority lodged in the county court of Virginia's colonial days (Boynton, p. 50). Local self-government is here a happy blending of the two systems (Boynton, p. 52).

31. The Counties: how Organized. There are seventy-five counties[1] in Oklahoma, created by the constitutional

[1] Most of the legal steps have been taken to create a new county in the extreme southwest corner of the state. It will be named Harmon after the governor of Ohio.

convention. At the time of this convention Oklahoma had organized territorial forms of government. Its counties were, for the most part, left as they had been under the territorial administration; but in some instances county boundaries were changed, large counties cut up, and, in the instance of Day County, entirely obliterated. On the Indian Territory side of the state there was no local self-government except that which related to citizens of the Five Civilized Tribes, so counties had to be created throughout this section.

32. The County Seat. The place where the county government is administrated is called the county seat. Here, at a building termed the courthouse, the county business is transacted, and here the district and county courts hold their sessions. The county seat is located by the constitution just as the county boundaries, but it can be changed in the following manner: twenty-five per cent of the electors of the county must petition for a change, whereupon the governor must issue a proclamation calling an election. If a majority of the votes cast shall be in favor of any town, such town shall thereafter be the county seat, unless the present county seat is within six miles of the geographical center of the county, in which case sixty per cent of the total votes cast is required to effect a change. If, however, the competing town is one mile nearer the center of the county than the present county seat, then the six-mile provision does not hold and a majority vote is sufficient to change to the competing city. The election officers to conduct a county-seat election must all come from another county. They are appointed by the governor to take charge of every polling place and to count the votes. These provisions for holding a county-seat election have been most satisfactory. Oklahoma

has avoided the countless bitter, and often bloody, county-seat wars that have stained the early history of other western states. The election is conducted by disinterested citizens, and no opportunity is given for ballot-box stuffing and frauds of a similar nature.

33. County Government. Oklahoma's constitution and statutes have created a threefold division of county government: executive, sheriff; legislative, county commissioners; judicial, county judge.

34. Sheriff. The sheriff is almost the only pure executive official known to the American polity, that is, he has no veto nor judicial authority. The sheriff's duties are to preserve the peace within the county, to attend court, and to serve processes. He arrests criminals and has charge of juries, witnesses, and prisoners; he executes the sentence of the courts, and also serves writs not only for the district court but also for the county court and justices of the peace. He is the governor's executive assistant in the county. The sheriff is elected for a term of two years, paid by fees.

35. County Attorney. Like any large corporation, the county employs a regular attorney to act for it in all law-suits. He represents the people, i.e. the state, in all criminal prosecutions and is therefore often called the state's attorney. The county attorney is the legal adviser of all county officials, and, in fact, of every township and city officer in the county in respect to county business. He is elected for a term of two years.

36. The County Clerk. In some states the county clerk is called the recorder, and in others the auditor. He is secretary of the board of county commissioners and has charge of all county papers. All warrants, i.e. orders upon the treasurer,

are issued by him. He is the bookkeeper for the county. He also makes up the tax roll after the assessors turn in their lists of taxable property to him. A copy of this tax roll is turned over to the county treasurer, to be followed in collecting each individual's taxes. He is elected for a term of two years, at a salary ranging from five hundred dollars to sixteen hundred dollars, depending upon the population of the county. He is also allowed three hundred dollars additional for making out the tax roll (chap. xi, § 175).

37. The County Treasurer receives and pays out all funds with which the county government has to do. He collects all taxes for township, school, city, and state purposes. He pays out no money except upon a properly signed voucher, properly indorsed by the payee, and this paper is his receipt and proof of payment. The county treasurer is the only treasurer in the state who collects funds, excepting certain special taxes. He pays over the pro rata share of all money to the township, school, city, and state treasurer for disbursement.

38. Register of Deeds. The transfer of real estate is counted such an important matter, and disputed titles to the land causes so much confusion, that the state provides for a man in each county to register the title of real estate. When a person buys real property he is given a deed. In order to prevent, as nearly as possible, all fraud in land titles, this deed is copied by the register of deeds in a public record book. In this way any one can learn exactly who owns the property. One should be careful to register a deed as soon as the land is purchased. If he does not, the grantor, if dishonest, might sell the same property again. If the second person who gets the land is an innocent purchaser, he will

hold title to the property, provided his deed is registered prior to that of the original purchaser, who then must look to the seller for satisfaction. The register of deeds also keeps a record of mortgages, leases, and other matters of general interest to the public. The boundaries of oil and mineral claims are here recorded. In fact, this officer keeps a record, when requested and a small fee is paid, of everything that pertains in any way to real estate titles or chattel mortgages. He also records the charter of a charter city, after it is approved by the governor (chap. ii, § 12).

39. The Surveyor. The duties of the county surveyor require that he survey all public improvements, such as roads, lands, and public buildings. He is not paid a salary; his compensation depends upon the amount of work required of him. Election to this office generally gives the surveyor a standing in the community that brings him much private business. He settles disputes about boundary lines, plats, town sites, surveys for irrigation ditches, and seeks general employment during the periods when not employed by the county.

40. Superintendent of Public Instruction. A school-teacher is generally chosen to the office of county superintendent of public instruction. This is the only county or township office that can be held by a woman. The county superintendent has general supervision over all the school-teachers in incorporated towns and in rural districts. He certificates teachers who do not hold state certificates, apportions the school fund to the respective districts, decides on the boundary lines of new districts, and in general promotes the welfare of the school system of the county. He is required by law to visit every teacher under his supervision once a year during school hours.

41. The Coroner. The Oklahoma constitution does not provide for the office of coroner; a justice of the peace acts in his stead. Most English-speaking communities elect a coroner to take charge of the dead body of a human being found under circumstances which warrant the suspicion that the deceased came to his death by violence. He summons a jury and investigates the cause of the death. The facts thus elicited, if any evidence of foul play is found, are turned over to an officer. There was once a time in England when the only county officers were the sheriff and the coroner. The coroner then acted in the sheriff's place when the latter was absent or incapacitated. This practice holds to-day. In many states the coroner is the only man who can arrest or serve a writ on the sheriff.

42. The County Weigher. Previous to the adoption of the constitution there was an official known as county weigher in the Oklahoma portion of the new state. The first state legislature reëstablished the office. The county weigher receives no salary, but his weights on cotton and grain are counted official, and the fees resulting from his office are considerable. This office is found in many western and southern states. It is created in order to save the farmer from false weights and collusion of grain factors. He is elected for a term of two years.

43. The County Board of Health. In each county there is a county board of health, whose duty it is to look after the general health of the community, abolish nuisances that are dangerous to the public health, quarantine persons afflicted with contagious diseases, and, in fact, to attend to all things necessary for the preservation of the public health. The members of the board are appointed by the county commissioners for a term of two years.

44. The Commission on Insanity. The county judge, a physician, and a lawyer constitute the commission on insanity. Persons thought to be insane are brought before this commission. If so adjudged, they are sent to the Hospital for the Insane at Fort Supply or to the sanitarium at Norman. As soon as the East Side Insane Asylum is completed at Vinita, the state will no longer send insane patients to the Norman Sanitarium. If the commissioners are convinced that relatives will take proper care of the insane patient, this is permitted, and the patient then does not become a charge on the state. These two commissioners, who are appointed to serve with the county judge, are chosen for a term of two years (chap. xiii, § 228).

45. The County Physician. The county physician is elected by the board of county commissioners. He attends the sick at the poorhouse, and prescribes for the indigent sick elsewhere in the county, when instructed to do so by the county commissioners. He is appointed for a term of two years. His salary depends upon the service rendered.

46. County Commissioners. The legislature of each county consists of three commissioners. In other states this body is frequently more numerous and is known under the name of supervisors or county court. But whatever the name may be, the functions vary but little. The commissioners of the county have general supervision of all roads and bridges, buildings, and other county property. They also have the care of the poor. The commissioners determine the tax levy for their respective counties, and all bills must be allowed by them before being audited by the county clerk or paid by the treasurer. The county commissioners also compose the county board of equalization (chap. xi, § 174). They are

elected for a term of two years. Their salary depends upon the population of the county. It ranges from one hundred and fifty to two hundred and fifty dollars per year. There is some other slight compensation in the way of mileage, etc.

47. Initiative and Referendum. Measures passed by the county commissioners, like all other legislation in the state, are subject to direct review by the people of the county (see chap. viii). The manner of exercising the initiative and referendum according to the constitution " shall be prescribed by the general laws, except that boards of county commissioners may provide for the time for exercising this power as regards local legislation in their respective counties and districts (Art. V, sect. 5).

48. The County Judge. The court over which the county judge presides has original jurisdiction concurrent " with the district court in civil cases in amount not exceeding one thousand dollars " (Art. VII, sect. 12). It is a court of record and has exclusive jurisdiction in all civil cases in which more than two hundred and less than five hundred dollars is involved. It also has the general jurisdiction of the probate court. It probates wills, appoints guardians of minors, idiots, lunatics, persons *non compos mentis*, and common drunkards ; grants letters testamentary and of administration, and transacts all business appertaining to the estates of deceased persons, minors, idiots, etc. The county judge also conducts the juvenile court. On certain days only youthful offenders are tried. Thus children are not contaminated by association with hardened criminals. In civil cases six electors compose a jury, and three fourths can render a verdict. In criminal cases the county judge's authority is about the same as that of a justice of the peace. He can act as examining and

committing magistrate in all criminal cases (Art. VII, sect. 17) (see chap. i, § 9).

49. County Superior Court. In each county of thirty thousand population, in which there is a city of eight thousand, a superior judge is elected. This judge has concurrent jurisdiction with the district and county courts, except he has no probate powers. His term is four years, and his salary is the same as that of the county judge in the county where he presides. At present (1909) but five counties have such courts — Oklahoma, Logan, Pottawatomie, Pittsburg, and Muskogee.

50. Eleemosynary Institutions. The several counties of the state shall provide, as may be prescribed by law, for those inhabitants who, by reason of age, infirmity, or misfortune, may have claims upon the sympathy and aid of the county (Art. XVII, sect. 3). Most counties have a poorhouse, or some other way to provide for the indigent within their borders. In densely populated counties these eleemosynary institutions are much more numerous, and the charity work is much more highly organized than in Oklahoma, where as yet there is little need of it.

CHAPTER IV

HOW TERRITORIES BECOME STATES — ENABLING ACT FOR OKLAHOMA

51. New States. The federal Constitution provides (Art. IV, sect. 3) that "new states may be admitted by the Congress into the Union"; and the next sentence of the same section states that "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States" (Boynton, p. 143). It was under this latter clause that Oklahoma was created a territory in 1890 by the passage of an *organic act*, i.e. an act organizing the territory (Boynton, p. 144). The portion of the state opened for settlement the previous year (1889) was a few counties west of the Creek and Seminole nations and north of the Chickasaws, to which the Panhandle was attached. Tract after tract was added to this nucleus until all the western half of the present commonwealth was known as Oklahoma Territory.

52. Territorial Government. While under this form of federal tutelage the citizens enjoyed many liberties, although two very important functions were denied them. These were the right to choose their executive with all his heads of departments and assistants, and to say who should be their judges and other court officials. Likewise, the single delegate sent to Congress had no vote. But the people of the territory were given local self-government in the townships, cities, and counties. They elected their own legislature and had

control of the taxes levied and moneys expended (Boynton, pp. 144–145). Territorial government is similar in form to that of a state. The exceptions above noted are the chief differences. These differences are minimized when the men appointed reside in the section over which they are to preside. Notwithstanding, a territorial form of government is far from self-government. The only way that a corrupt or inefficient appointee can be removed, is to convince the President of his incompetency. This is frequently very hard to do, since it is almost impossible to arrive at the exact truth in such cases. However, the government of Oklahoma Territory was in the main satisfactory, and was, in general, the same as that adopted by the delegates of the people when they met to form a state government.

53. Indian Territory. The enabling act that passed Congress June 14, 1906, extended the boundaries of the state about to be formed, to include Indian Territory. This section of the present state of Oklahoma had never had a territorial form of government. In the early years of the nineteenth century the region now embraced in the state of Oklahoma had been set apart for an Indian empire. The Five Civilized Tribes (Cherokees, Creeks, Seminoles, Choctaws, and Chickasaws) were settled here. They formed tribal governments, republican in form, that were fairly efficient. Notwithstanding the fact that other tribes and remnants of tribes subsequently settled in this section, the population grew very slowly. Much of the land remained unoccupied, some of which the Indians receded to the government, thus affording land for the "first opening" in 1889. But the white men who moved upon these receded tracts were not the only ones who came into the Indian country. At first they came in slowly, later by

the thousands. White interlopers moved into the territory of the Civilized Tribes. These whites were not always welcome, yet they were tolerated. They worked the Indian lands, developed rich mines, and settled in the towns, but these white men had no standing in the tribal courts. They were recognized in no way by the tribal law. Such an anomaly could not long exist; and the federal government, in spite of the Indians' treaty rights, was forced to step in and give the white population legal recognition. This was done through the Bureau of Indian Affairs and the Dawes Commission.

54. Bureau of Indian Affairs. Previous to 1871 each Indian tribe was treated as a foreign nation, but in that year a bill was passed making them wards of the nation. Their interests are now looked after by the Bureau of Indian Affairs (Boynton, p. 213), under the secretary of the interior. A board of Indian commissioners oversees the expenditures of money and inspects the goods purchased for all agency Indians. Inspectors visit the agencies and examine into the condition of the various tribes. Agents are appointed, who, with the help of teachers, mechanics, and farmers, promote the Indians' welfare intellectually and industrially. Indian schools are maintained at every agency. The institutions for the more advanced students are supported at various places throughout the country. The schools at Carlisle, Pennsylvania, and Hampton, Virginia, are especially famous. Because of Oklahoma's large Indian population it has had much to do with the Department of the Interior and the Bureau of Indian Affairs.

55. The Dawes Commission. A division of the Department of the Interior is a committee of three men, organized in 1893, to look after the interests of the Five Civilized

Tribes. Its main office is in Muskogee. Previous to the establishment of the Dawes Commission, government in the Indian Territory was in a chaotic condition. United States marshals tried to keep order, and would take offenders off to Fort Smith, Arkansas, or to Texas to stand trial in the federal courts. There were no taxes, and consequently no public roads or bridges, and no public schools supported by the white residents. The Indian schools soon became crowded and white children were shut out altogether. Private enterprise was at a low ebb, because the Indians owned the land. Treaties were finally obtained by the general government from all the tribes, in which the Indians agreed to take their lands in severalty. In 1898 Congress extended the laws of Arkansas over Indian Territory, and the same year the enrollment of Indians began. The allotment of separate farms to every man, woman, and child had progressed so rapidly that in 1907 the Indian governments ceased to exist. Indian citizens had become American citizens.

56. Removal of Restrictions. After an Indian, intermarried citizen, or freedman had been put upon the tribal roll he was given a definite plot of land, the number of acres allotted varying according to the class of the land. (Freedmen were not placed upon exactly the same plane as others on the rolls.) Land thus allotted was not to be sold for twenty-one years. From time to time, however, Congress removed the restrictions from certain classes of citizens. The Dawes Commission, under the secretary of the interior, was given authority to determine when the necessary conditions had been met. Still progress was greatly handicapped by the fact that the title to nine tenths of the country could not be had, and highly educated Indians were not allowed to

dispose of their holdings. In May, 1908, however, a bill was approved by the President, removing the restrictions from ten million acres. The act provided that intermarried whites, freedmen, and mix-blood Indians having less than half Indian blood, including minors, shall be free from all restrictions. This puts an immense dominion subject to taxation, but, better than this, it marks the full recognition of the fact that these Indians are no longer wards of the nation, but true American citizens, — free in every particular.

57. Indian Territory School System. By the terms of the Curtis Act, passed in 1898, a system of schools for white children was established in the Five Civilized Tribes. Indians also attend these free schools if they so desire, although most of them choose to attend tribal schools. Separate schools have always been provided for negroes. A superintendent of schools for the Indian Territory was appointed; and four supervisors of education — one each for the Cherokees, Choctaws, and Chickasaws, and one for the Creeks and Seminoles — were given direct charge of the free schools of these nations. The federal government appropriated funds to carry on the work in rural communities, and each locality was expected to assist in some way in meeting the expenses of the school. The incorporated cities of the Indian Territory had sufficient taxable property to maintain a system of schools without federal aid. In 1908 Congress appropriated three hundred thousand dollars for the maintenance of these schools for the year. By the coöperation of the federal authorities with the county superintendents, localities that could have almost no school are now able to have a full term. When the last restriction bill comes into full effect

it is believed that there will be sufficient taxable land to support the schools, when federal aid will naturally cease.

58. Admission of Territories. States are usually admitted into the Union in one of two ways. Congress may pass an "enabling act" by which the people are allowed to form a state constitution (Boynton, pp. 231–232). In this constitution certain provisions must be incorporated, which are set forth in the enabling act. Most of the states of the Union have been admitted in this way. Other territories have become states by submitting to Congress a constitution that meets the approbation of that body. Upon the approval of the constitution thus submitted the territory becomes a state. Michigan, Kansas, and Oregon came into the Union by this method.

59. The Oklahoma Enabling Act. Oklahoma was admitted by the former method. An enabling act was passed, setting forth certain conditions that must be met by the territories before the President could proclaim them a state. Other restrictions were put upon the new commonwealth, which, if infringed, will be enforced through the federal courts. We present a detailed digest of this act, because, on its acceptance, the enabling act became a part of the constitution. The following ordinance of acceptance was passed by the convention: "Be it ordained by the constitutional convention for the proposed state of Oklahoma, that said constitutional convention do, by this ordinance irrevocable, accept the terms and conditions of an act of Congress of the United States, entitled, An act to enable the people of Oklahoma and the Indian Territory to form a constitution and state government and be admitted into the Union on an equal footing with the original states."

60. Provisions of the Enabling Act. Some of the more important provisions of the enabling act follow: Plural marriages are forever prohibited in Oklahoma; no act can be passed infringing perfect religious toleration; right of suffrage cannot be abridged on account of race, color, or previous condition of servitude; rights and property of the Indians in the two territories can in no way be impaired; sale of liquor in Indian Territory, Osage Nation, and all Indian reservations in existence after January 1, 1908, is prohibited for twenty-one years, but the state legislature may authorize the establishment of dispensaries where liquor may be sold for scientific, medicinal, and industrial purposes. The state legislature may authorize one agency in each town of not less than two thousand population for the sale of liquor, and one in each county not containing a town of two thousand population; druggists may be allowed to sell liquor in restricted territory for medicinal purposes, but the sales must be registered upon the affidavit of the purchaser, and the druggist's bond must be one thousand dollars to secure rigid enforcement of the law; separate schools for white and colored children may be established if desired; two United States senators and five congressmen are allowed the state; the constitutional convention was to consist of one hundred and twelve delegates; one hundred thousand dollars was donated by Congress to pay the expenses of organizing the state government; Oklahoma is to have two federal district courts; one million fifty thousand extra acres of public land was given to the state; if the school lands are sold, it shall be by appraisal and sale in tracts of one hundred and sixty acres or less at public auction; five million dollars is added to the state's permanent school fund because of Indian Territory's

lack of school lands; section 33 is reserved for public buildings; the other public lands are reserved for common schools and state colleges; reserved mineral lands of the state may be leased, but shall not be sold prior to January 1, 1915. The government of the state must be republican in form.

CHAPTER V

OKLAHOMA CONSTITUTION — BILL OF RIGHTS

61. The Constitutional Convention. The delegates elected under the foregoing Enabling Act met in Guthrie, November 20, 1906. The convention was in session until July 16, 1907, but not continuously. The constitution adopted by these delegates is the longest document of its kind in this country. Because of the peculiar relations of the two territories that composed the new state, much material had to be inserted that quite naturally would not occur in similar documents. But the very nature of the instrument itself compelled that it be lengthy and detailed (Boynton, p. 269).

62. The Oklahoma Constitution. The Oklahoma constitution was ratified by the electors of the two territories, September 17, 1907. On November 16, the same year, statehood was proclaimed by the President. Previously the document had been subjected to a rigid examination by President Roosevelt and Attorney-General Bonaparte, his legal adviser, to see whether or not the charter squared with the Constitution of the United States and the enabling act. Owing to the length of the document only the most important phases will be discussed here.

63. The Preamble. "Invoking the guidance of Almighty God, in order to secure and perpetuate the blessing of liberty; secure just and rightful government; promote our mutual welfare and happiness, we, the people of the state of Oklahoma, do ordain and establish this constitution." The phrase

invoking the aid of Almighty God was expressly inserted to show that Oklahoma is a God-fearing, Christian republic.

64. Contents of the Oklahoma Constitution. In general form the Oklahoma constitution is very similar to that of the nation. It consists of twenty-four articles and a "schedule"; also the prohibitory amendment and a resolution adopting the Constitution of the United States, and another accepting the enabling act. Most of the articles are in turn divided into sections. After the preamble the articles in turn take up the various topics as follows: I, Federal relations; II, Bill of Rights; III, Suffrage; IV, Distribution of powers; V, Legislative department; VI, Executive department; VII, Judicial department; VIII, Impeachment and removal from office; IX, Corporations; X, Revenue and taxation; XI, State and school lands; XII, Homesteads and exemptions; XIII, Education; XIV, Banks and banking; XV, Oath of office; XVI, Public roads, highways, and internal improvements; XVII, Counties; XVIII, Municipal corporations; XIX, Insurance; XX, Manufacture and commerce; XXI, Public institutions; XXII, Alien and corporate ownership of lands; XXIII, Miscellaneous; XXIV, Constitutional amendments. Then follows the "schedule" under which the instrument is signed, and following this are the prohibitory provision, which was voted upon separately, and the two resolutions above noted.

65. Federal Relations. The seven sections of Article I are chiefly statements accepting the conditions of the enabling act. "The state of Oklahoma is an inseparable part of the federal Union, and the Constitution of the United States is the supreme law of the land" (Art. I, sect. 1). This is an apt expression of the present relation of the state to the

Union. It is only since the Civil War that the states have fully realized that they are an inseparable part of the Union.

66. The Oklahoma Bill of Rights. In the Oklahoma constitution (Art. II) the Bill of Rights (Boynton, p. 243) bears the very place of honor in the state's basic law. It is much more detailed than is the Bill of Rights in the federal Constitution. Of the thirty-three sections in this Bill of Rights we will merely discuss the few that differ widely from those found in the constitutions of other states.

67. Habeas Corpus. "The privilege of the writ of habeas corpus (Boynton, pp. 153–154) shall never be suspended by the authorities of the state" (Art. II, sect. 10). This clause in the Bill of Rights is one of its radical departures. Article I, sect. 9, of the federal Constitution states that "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety shall require it." The Oklahoma constitution makes no exceptions. The writ of habeas corpus is never to be suspended.

68. Trial by Jury. Juries in courts of record, that is, a higher court where felonies are tried, consist of twelve men. In a justice court (chap. i, § 9) or a county court (chap. iii, § 46) six men can try a case. A case not involving twenty dollars is usually first tried in one of these lower courts, because the expense is much less than in a district court; but wherever the case is first tried the constitution expressly provides that laws may be provided limiting appeals in cases "involving less than twenty dollars." This is to prevent clogging a higher court with trivial business. In all civil suits, and also in all criminal cases, except where the death penalty or a penitentiary sentence may follow conviction, when a unanimous decision is required, three fourths of the

jury can decide the case. This clause in our constitution is a radical departure from the English law, which always demanded a unanimous decision. Its purpose is to make it easier to transact court business by avoiding so many divided juries.

69. Contempt of Court. Contempt of court arises generally from violating some court order. Sometimes contempt of court is held to be talking or writing disrespectfully of a judge or his decisions. This kind of contempt can be adjudged through the law of libel, but orders in chancery or equity have always been dealt with by the judge. The person accused of breaking the order is brought into court. The judge makes the investigation and assesses the punishment. Men are not infrequently sentenced to long terms in jail or to pay large fines in this summary fashion. As a rule Americans are very careful whom they elect as judges, yet, to make doubly sure, personal liberty as already safeguarded by the Bill of Rights provides as follows: "Every one accused of violating an injunction or other restraining order of a court is now allowed a trial by jury, provided the alleged contempt is not committed in the presence of the court." This contempt provision in the Oklahoma Bill of Rights presents, possibly, the most radical provision in the constitution of the state. It is well to note, however, that the judge can impose penalties for contempt committed in his presence. Only in this way could the authority and dignity of the court be maintained (Art. II, sect. 25).

70. When Incriminating Evidence can be Required. It is an old rule of law that a person shall not be compelled to give evidence that will render him liable to a criminal prosecution, and this is the general rule in Oklahoma (Art. II,

sect. 21). But this section of the Bill of Rights must be read in connection with section 71. It is there stated that under certain circumstances incriminating evidence must be given, but the one giving such evidence cannot be prosecuted or subject to any penalty for matters thus revealed. This is another provision to prevent overriding the law.

71. Books of All Corporations can be Investigated (Boynton, p. 216). At all times the records, books, and files of all corporations shall be "liable and subject to the full visitorial and inquisitorial powers of the state, notwithstanding the immunities and privileges in this Bill of Rights secured to the persons, inhabitants, and citizens thereof" (Art. II, sect. 28). Another section (30) of this article provides that no search warrant shall issue except upon probable cause, and in no way are the citizens of Oklahoma subject to any such thing as the Writs of Assistance that distracted our fathers in colonial days. But this section provides that corporations shall be subject to just such inquisitorial powers in regard to their books. The Oklahoma constitution provides that the right of search does extend to corporations. The reason for this is that corporations are created by the state, and therefore should be subject to the full visitorial and inquisitorial powers of the state (chap. xiv, § 243).

72. No Person shall be Transported. No person shall be transported out of the state for any offense committed within the state, nor shall any person be transported out of the state for any purpose, without his consent, except by due process of law; but nothing in this provision shall prevent the operation of extradition laws, or the transporting of persons sentenced for crime, to other states for the purpose of incarceration (Art. II, sect. 29). It is contrary to public policy to allow

citizens of one state to be seized and transported to another for trial, yet it has been done in other states. The Oklahoma constitution peremptorily forbids such abuses. However, if one commits a crime and flees to this state, on a proper showing he must be promptly surrendered for trial in the state where the offense occurred. This giving up of persons accused of crime is termed extradition. The English Bill of Rights of 1689 and the Bill of Rights found in the first ten amendments to the national Constitution contain all other essential provisions of the other articles of the Oklahoma Bill of Rights.

CHAPTER VI

LEGISLATIVE DEPARTMENT, SENATE AND HOUSE OF REPRESENTATIVES

73. Threefold Division of Government. The powers of the government of the state of Oklahoma are divided into three separate departments, — the legislative, executive, and judicial; and except as provided in the constitution, these departments must be separate and distinct, and neither shall exercise the powers properly belonging to either of the others (Art. IV, sect. 1) (Boynton, p. 269).

74. The Legislative Authority of the State. The constitution vests the legislative authority of the state in a legislature (Boynton, p. 272), consisting of a senate and a house of representatives; but the people reserve to themselves the power to propose laws and amendments to the constitution, and to enact or reject the same at the polls independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act of the legislature (Art. V, sect. 1). Thus the legislative function in Oklahoma is divided among four distinct sources of power, — one more than we find in the federal government, — as follows: (1) house of representatives; (2) senate; (3) governor, by veto power (chap. viii, § 111); (4) the people, by initiative and referendum (chap. vii). There is no special need for a two-chambered legislature in the states, as both houses are elected directly by the people. In all the states except Rhode Island and North Carolina the governor has the right of veto.

75. Initiative and Referendum. The initiative is nothing more than a petition, signed by a certain number of legal voters, that must be heeded. The referendum is the people's veto or approval of the acts of the legislature. The constitution says that if the governor approve a law he shall sign it. If he does not approve he vetoes it, that is, forbids it. If the people approve a law they vote for it, if not, they vote against it. All laws are not submitted to the people for an expression of their opinion, but practically all legislation can be submitted to them if they so desire (see chap. vii).

76. Senatorial Districts. The state is divided into thirty-three senatorial districts, each of which elects one senator, while eleven of these districts are allowed an extra senator, making forty-four in all. If any county becomes entitled to more than two senators, because of its increased population, it is given this extra representation in addition to the forty-four (Art. V, sect. 9 a). As near as possible the senatorial districts are to contain an equal number of inhabitants, which number is to be obtained by the latest federal census, or in such manner as the legislature may direct. These districts must be compact, must consist of contiguous territory, and cannot be altered from one ten-year period to another. No county can be divided to form a senatorial district, unless it is to make two or more districts in said county. Nor can a city or ward be divided to form a district. These provisions obviate to a great extent the possibilities of gerrymander (Boynton, p. 103).

77. Term of Office of Senators. The term of office of each senator is four years. But as only half the senators go out of office every two years, the term of those chosen at the first election from the even-numbered districts expired fifteen days after the regular election in 1908. Those from

the odd-numbered districts hold their office until the fifteenth day after the election in 1910. Where two senators came from the same district they had to cast lots for the long and short term.

78. Senators: their Qualifications. Senators must be at least twenty-five years of age, must be electors of their respective districts, and must reside there during their terms of office (Art. V, sect. 17) (Boynton, p. 272).

79. Senate: its Officers. The lieutenant governor (Boynton, p. 274) is president of the senate, but has only a casting vote in case of a tie. The senate chooses one of its own members president *pro tempore*, who presides in the absence of the lieutenant governor. It also provides for necessary clerks, sergeants-at-arms, doorkeepers, pages, and a postmaster. The constitution likewise makes this very important provision: "The senate shall provide for all its standing committees and, by a majority vote, elect the members thereof" (Art. V, sect. 98). The power to choose legislative committees is one of the most important in the state. In the nation it has made the speaker (Boynton, p. 171) of the house of representatives almost as powerful as the President, and in Oklahoma this power allowed the speaker greatly enhances his authority (chap. vi, § 83). The senate, however, allows no one man to appoint its standing committees and thereby control legislation.

80. The Senate: its Executive Powers. The United States Senate has many executive powers (Boynton, p. 149). Chief of these is its power to pass on all appointments of the President. Since in Oklahoma most of the administrative officers under the governor are elected, the state senate has no such wide executive powers. Such a right only comes to

it when the law creating the office specifies that the official appointed under it shall be confirmed by the senate.

81. Representative Districts: Term of Office: Apportionment. The total population of the state is divided by one hundred, and legislative districts are established, each containing, as nearly as possible, this number of inhabitants. But the membership in the house of representatives will always be considerably larger than one hundred, because if any representative district has a sufficiently large fraction left over, it will be given additional representation (Art. V, sect. 10). Representatives are elected in the even years and hold office for two years. Each county is given at least one representative, if it has sufficient population to in any way warrant it (Boynton, p. 273).

82. Representatives: their Qualifications. Members of the house of representatives in Oklahoma must be twenty-one years of age at the time of their election. They also, like the senators, must be qualified electors in their respective counties or districts, and must reside therein during their term of office.

83. Speaker. The constitution provides that the house of representatives shall, at the beginning of each regular session, and at such other times as may be necessary, elect one of its members speaker (Art. V, sect. 29). It is to be observed that the speaker, unlike the lieutenant governor, is a regularly elected member of the body over which he presides. If he chooses to exercise his right, he has a vote upon every question that comes before the body. The powers of the speaker in shaping legislation are extensive. This is because of the rule of the house allowing him to appoint all standing committees. By this means the speaker sees to

it that men favorable to his ideas are put in the majority upon all important committees. All legislative measures must be first passed upon by some one of these committees before the house considers them. If the committee to which a bill has been referred approves of it, then it is reported back to the representatives for consideration; if the committee does not approve, it refuses to report the bill and it is "strangled" in the committee. It is easy to understand, if the speaker has control of a majority of all committees, that only such bills as he approves can become laws. The extensive authority of the Oklahoma speaker is based on the wide powers granted the presiding officer of the federal lower house. However, it is well to note that the extensive powers of the speaker rest upon the consent of the members of the house. If at any time a majority decides to clip his dictatorial powers, it can be done easily. The other officers of the house are about the same as those of the senate (Boynton, pp. 171–173).

84. Adjournment and Special Sessions. Neither house during the session of the legislature shall, without the consent of the other, adjourn for more than three days, and cannot adjourn to any other place than that in which the two houses shall be sitting (Art. V, sect. 30). But in case of a disagreement between the two houses, with respect to the time of adjournment, the governor may adjourn them to such time as he may deem proper. He can also convoke the legislature, or adjourn it to another place, when in his opinion the public safety or the safety or health of the members require it.

85. Revenue Bills. All bills for raising revenue must originate in the house of representatives. The senate may propose amendments to revenue bills. This is in accordance

with the federal Constitution, which requires that all revenue bills originate in the lower house (Boynton, p. 147). The reason for this is that the house of representatives is much nearer the people than the senate; but this explanation is not of so much force in any state legislature, where both senators and representatives are elected directly by the people. No revenue bill shall be passed during the last five days of the session (Art. V, sect. 38).

86. Each House Sole Judge of its Own Members. Each house is judge of the election, returns, and qualifications of its own members (Art. V, sect. 30). This means that neither the courts nor the executive have anything to say as to whether a person has been elected a member of either house, or whether the conduct of a member after election is such that he can continue to serve. This provision is in the constitution, in order to keep the legislature an absolutely distinct branch of the government. However, it takes two thirds to expel a member (Art. V, sect. 30).

87. Salary. Members of the legislature receive six dollars per day during the sessions of the legislature, and ten cents per mile for every mile of necessary travel in going to and returning from the place of meeting, on the most usual route. They shall receive no other compensation. It is also provided that after sixty days of each session have elapsed they can receive but two dollars per day. This is to induce them to finish up the business of the legislature and adjourn as soon as possible (Art. V, sect. 21).

88. Vacancies. The governor shall issue writs of election to fill such vacancies as may occur in the legislature (Art. V, sect. 20). Other vacancies are generally filled by appointment, but the members of the legislature must always be

elected. By this provision the legislature is kept a distinct branch of the government. The members have the people who elect them to thank for their office, and no one else (Boynton, p. 105, concerning vacancies in Congress).

89. No Member to Vote if Personally Interested in a Bill. The constitution provides that a member of the legislature who has a personal or private interest in any measure or bill proposed or pending before the legislature shall disclose the fact to the house of which he is a member, and shall not vote thereon (Art. V, sect. 24).

90. Quorum. A majority of each house constitutes a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalty as each house may provide (Art. V, sect. 30).

91. Journal of Proceedings. Each house shall keep a journal of its proceedings, and from time to time publish the same. The yeas and nays of the members of either house on any question, at the desire of one fifth of those present, shall be entered upon its journal (Art. V, sect. 30). By this means is the public informed of what goes on in the legislature. There are also public galleries in each of the chambers, where citizens may attend the session of either the senate or the house, and personally observe how their legislators conduct public business.

92. Joint Sessions. United States senators are elected by the legislature in joint session, the lieutenant governor and speaker presiding jointly. The legislature in joint session canvasses the vote for all elective state officers, the one having the highest number of votes being declared elected. In case of a tie vote between two or more candidates, the

legislature shall forthwith, by joint ballot, choose one of the persons having an equal number of votes for said office.

93. How Laws are Passed. Every bill shall be read on three different days in each house. No bill shall become a law unless, on its final passage, it is read at length, and a majority of all the members elected to each house vote in its favor. The question upon final passage shall be taken upon its last reading, and the yeas and nays shall be entered upon the journal (Art. V, sect. 34).

94. Every Act to have an Express Title. Every act of the legislature shall embrace but one subject, which shall be clearly expressed in the title, except general appropriation bills, general revenue bills, and bills adopting a code of laws (Art. V, sect. 57). This provision is to prevent the slipping through the legislature of objectionable measures by the use of false titles. It also prevents the use of "riders," i.e. tacking on to a good bill things that are opposed by many.

95. Emergency Legislation. No act shall take effect until ninety days after the adjournment of the session at which it was passed, except enactments for carrying into effect provisions relating to the initiative and referendum, or general appropriation bills, unless, in case of emergency to be expressed in the act, the legislature, by a vote of two thirds of all members elected to each house, so direct. Emergency bills only include measures immediately necessary for the preservation of the public peace, health, or safety. Emergency measures may be vetoed by the governor, but they may be passed over the veto by a three-fourths vote of each house. It takes but a two-thirds majority to pass an ordinary measure over the governor's veto. Emergency bills are not subject to referendum (chap. vii, § 103).

CHAPTER VII

LEGISLATIVE DEPARTMENT, INITIATIVE AND REFERENDUM

96. Principle of Direct Legislation. The one great object of Oklahoma's constitution builders was to bring the government as near to the people as possible. It would be absolutely out of the question in any large and populous state, to have all the people meet in a single primary assembly and enact laws. To overcome this, another system of pure democracy has been devised. By means of the initiative any citizen can frame a law, and if a sufficient number of electors join with him and sign this law, it must be presented to the voters of the state. At this referendum (election) this law is either adopted or rejected. Oklahoma's constitution contains such provision.

97. The Initiative. The initiative is really nothing but a petition addressed to the governor, which must be heeded, if it is presented in legal form. The governor must then appoint a day for the vote to be taken upon this measure. Thus if the Oklahoma legislature neglects or refuses to pass laws that are demanded, the people have a means of obtaining the desired legislation. Only qualified electors can sign an initiative petition. Eight per cent of the legal voters have the right to propose any legislative measure, but fifteen per cent of the legal voters must sign the petition, if the proposed measure is an amendment to the constitution (Art. V, sect. 2). If any measure is proposed by initiative and fails,

then a petition of twenty-five per cent of the qualified electors must be obtained before a referendum can again be held on the same question within three years (Art. V, sect. 6); but if one is willing to wait three years before initiating the same measure, then the usual per cents hold as at first. The reason for this large per cent of signers in order to obtain a rehearing is to prevent worrying the people with the reconsideration of a measure but recently voted upon. The ratio and per cent of legal voters are based upon the number of votes cast for all candidates who, at the last general election, ran for the "state office that received the highest number of votes."

98. What the Governor does with the Initiative Petition. The governor submits said initiative petition to the voters of the state. The style or heading of all referenda must be: "Be it enacted by the people of the state of Oklahoma." This vote is termed a referendum, and must be taken at the next regular election throughout the state, except when the legislature or the governor shall order a special election for the express purpose of making such reference. If a majority of the votes cast are for the measure, it takes effect and is in force immediately (Art. V, sect. 3).

99. Governor cannot veto an Initiated Law. The governor cannot veto an act passed by the people, but the legislature can repeal such a statute just as it can any other law. Of course, if the people pass a constitutional amendment by initiative and referendum, the legislature cannot alter this any more than it can any other portion of the constitution. The governor is not allowed to veto an act passed by initiative and referendum, because it is not contemplated that one man should interpose his will against that of the whole people.

100. Why the Legislature can repeal an Initiated Statute. If the constitution had not provided that the legislature could repeal statutes passed by initiative and referendum, it is doubtful whether our constitution would have been proclaimed as in accordance with the enabling act, which provides that the government of the state must be republican in form. If the representatives of the people had not been given this authority, then the constitution would have been democratic instead of republican in this respect, and just that much out of accord with the enabling act (Art. V, sect. 7).

101. The Referendum. The referendum is an election. We have seen that the initiative is a petition framed as a law. It is without force or value until enacted into law by a majority at a referendum. But the referendum is not only used to enact statutes and constitutional amendments framed by initiative petition; it is also used to prevent laws that the people do not want. If the legislature passes a law that the people do not want, a means has been provided by the constitution for the people to veto the measure. Such a referendum vote may be ordered in two ways: first, by the people, when the legislation is considered as objectionable; and second, by the legislature, when the members are not sure whether or not the people wish a certain law.

102. How the People order a Referendum. A referendum petition demanding that a certain law, passed by the legislature, be submitted to the people needs to be signed by but five per cent of the legal voters of the state to obtain such referendum. Said petition must be filed within ninety days after the final adjournment of the session of the legislature which enacted the bill on which the referendum is demanded (Art. V, sect. 3). The referendum may be demanded by the

people against one or more items, sections, or parts of any act of the legislature, in the same manner in which such power may be exercised against a complete act. If a majority of the electors vote against it, the law is null and void (Art. V, sect. 2).

103. Emergency Legislation not Subject to Referendum. Laws necessary for the immediate preservation of the public peace, health, or safety are termed emergency legislation. Acts that have failed to receive the necessary two thirds to declare an emergency do not go into effect until ninety days after the adjournment of the session at which they were passed. Against these the referendum can be invoked. Emergency laws go into effect at once, and are therefore not subject to the referendum. Such a petition would stop the operation of the law until it had been voted upon, and the very nature of an emergency law demands that it go into effect at once. There is no reason why one cannot file an initiative petition repealing an emergency law that is not wanted, and if ratified at the poles, the law ceases to be of effect. General appropriation bills become effective as soon as passed (Art. V, sect. 8), but such acts or even separate clauses in such acts may be delayed until passed upon by the people. The filing of a referendum petition against one or more items, sections, or parts of an act, however, does not delay the remainder of such act from becoming operative (Art. V, sect. 4).

104. Constitutional Amendments. Fifteen per cent of the qualified electors of the state can demand that an initiative petition be submitted to amend the constitution of the state. A majority of both branches of the legislature may order a referendum to amend the constitution or to approve a statute. It requires a majority of all the votes cast at an election to adopt

an amendment to the constitution, while but a majority of all the votes cast upon any particular proposition is required to enact a statute. A two-thirds vote of each house of the legislature can order a special election to vote upon constitutional amendments. Also the governor has authority to call such an election provided an initiative petition to amend the constitution has been presented to him. If a special election is not called, the proposition is voted upon at the next general election. No convention can be called by the legislature to propose alterations, revisions, or amendments to the constitution, or to propose a new constitution, unless the law providing for such convention shall first be approved by the people on a referendum vote. The amendments, alterations, revisions, or new constitution proposed by such convention must be submitted to the electors of the state, and must receive a majority of all electors voting thereon, before becoming effective. The question as to whether the people wish such a convention to revise the constitution must be submitted to the electorate of the state every twenty years (Art. XXIV, sect. 2).

CHAPTER VIII

EXECUTIVE DEPARTMENT

105. Executive Department. Upon the governor, with the numerous administrative officers and commissions under him, falls the duty of executing the laws. According to Article IV of the constitution, the executive department of the state's government (Boynton, pp. 264–286) is a coördinate or equal branch of its government. The governor cannot intrude on the authority of the legislature or judges, but neither can either of these departments infringe on his jurisdiction.

106. A Divided Executive. It is well to note at the beginning that the executive authority in the state is divided among numerous men, and that therefore the power of the governor (Boynton, pp. 276–277) is limited. The President appoints and has full control over the administrative officers under him. If a cabinet officer (Boynton, p. 203) should refuse to do as directed by the President, he can be summarily removed. The governor of the state has no such executive powers. The so-called administrative officials in the state are really departmental executives. Within the limitations of their own office they perform their duties as they please, without any dictation from the governor. The administrative officials in the state who are elected, are responsible to the people who elect them, not to the governor. Thus it is clear that Oklahoma has a decentralized executive. The nation has a centralized executive. The governor, however, usually has the same authority over the few men he appoints

as does the President over his appointees; but it is only the subordinate officers of the state over which the governor has this power. All the chief administrative officials are elected. Again, the governor's executive power is divided with a host of subordinate county, city, and civil district officials. These officials help execute the laws of the state. Their authority comes from the people, not from the governor, and they are just as apt to thwart the state's chief executive as to coincide with his views. The extent of national authority over the states is limited by the constitution (Boynton, p. 152), but just so far as that authority runs, the executive power of the President is not curtailed. The one infringement on the President's executive powers has come through the civil service, and every President in recent years has advocated such restrictions of his appointing power.

107. The Governor: Qualifications; Term; Salary. The supreme executive power is vested in a chief magistrate, who is styled The Governor of the State of Oklahoma (Art. VI, sect. 2). The governor must be a male citizen of the United States, thirty years of age, and for three years next previous to his election a qualified elector of the state. His term of office is for four years at a salary of $4500 per year. The term begins on the second Monday in January after the November election. State elections fall in the even years between the presidential elections; by this means it is hoped to avoid confusing state with national issues. Presidential elections occur in 1908, 1912, 1916, etc.; state elections will come in 1910, 1914, 1918, etc.

108. Reëligibility of the Governor and of Others. The governor is not allowed to immediately succeed himself. Three other officials of the executive department are placed under

the same restriction; they are the secretary of state, state auditor, and state treasurer. It is often charged that executives, instead of administering the law without fear or favor, spend a great portion of their first term fixing things so that they can be reëlected. By preventing immediate succession it is believed that the governor will execute the laws with greater singleness of purpose and less striving to maintain himself in office. The term of secretary of state, auditor, and treasurer is limited, because it is believed that new men should check these officials up at the close of their term. They all handle large sums of the state's money, like the secretary of state and treasurer, or draw out these funds, like the auditor. To avoid mistake or mismanagement in the finances of the commonwealth, it was deemed best to have a change every four years.

109. Executive Duties of Governor (Art. VI). The executive duties of the governor need no further explanation than to be enumerated, except his power of convoking the senate in its executive capacity. The right to confirm some officials appointed by the governor is retained by the upper house of the legislature. This is the only executive power possessed by the senate, and to exercise this authority is the only reason that it should ever be summoned in extraordinary session without the house of representatives. The governor is commander in chief of the militia[1] except when in service of the United States; causes the laws to be faithfully executed; conducts all intercourse and business with other states and with

[1] The militia of the state consists of twelve companies of infantry, one company of engineers, one company of signal corps, a hospital detachment, and regimental band. An adjutant-general, under the direction of the governor, is in command of these troops. The adjutant-general and his office assistants are the only militiamen regularly in the employ of the state. The rest of the state's military force receive pay only when called into service.

the United States; conserves the peace throughout the state; commissions all officers not otherwise commissioned by law; appoints, unless otherwise provided by law, persons to fill vacancies until their successors shall have been duly elected; and convokes the senate in its executive capacity.

110. Legislative Duties of Governor. The governor has extensive control over legislation. He can convoke the legislature on extraordinary occasions, and at such times no subject can be considered except those he recommends. In time of invasion or rebellion, for the sake of public safety, he can convoke the legislature at a different place than the state capital. Also, in case the health or safety of the members is endangered, he can adjourn them to a different place; but in this case two thirds of all members elected in each house will have to agree to the change. Also, in case of a disagreement between the two houses of the legislature, at a regular or special session, with respect to the time of adjournment, the governor may, if the facts be certified to him by the presiding officer of the house first moving the adjournment, adjourn them to such time as he shall deem proper, not beyond the day of the next stated meeting of the legislature (Art. VI, sect. 14). Another method by which the governor may direct legislation is by the exercise of his power to send messages to the legislature. "At every session of the legislature, and immediately upon its organization, the governor shall communicate by message, delivered to a joint session of the two houses, upon the condition of the state, and shall recommend such matters to the legislature as he shall judge expedient" (Art. VI, sect. 9). But this formal message can be supplemented at any time by terse communications on any subject which the governor thinks demands attention. An able

executive can use such message with telling effect in forcing a reluctant legislature to pass bills he counts of importance.

111. The Veto. The greatest of the governor's legislative powers is his right of veto. This allows the state's chief magistrate to pass final judgment on every enactment the legislature frames. The word veto means, "I forbid." If vetoed, a bill goes back to the house where it originated, where the governor's objections are entered on the journal. If, after such reconsideration, two thirds of the members elected to that house shall agree to pass the bill or joint resolution, it shall be sent, together with the objection, to the other house, by which it shall likewise be reconsidered; and if approved by two thirds of the members elected to that house, it shall become a law, notwithstanding the objection of the governor. In all such cases the vote in both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively. If the governor fails to either sign or veto (Boynton, p. 277) a bill within five days (Sundays excepted), it becomes a law without his signature and without further ceremony. But if the legislature adjourns, the governor is given fifteen days in which to sign bills passed before adjournment. If he fails to sign a bill within this time, the measure falls exactly as if he had vetoed it. This is known as the "pocket veto." The governor has still further privileges in the vetoing of special items of an appropriation bill. Thus, he can sign the bill granting money, but can forbid one or more items in it of which he does not approve. Where this right of special veto does not exist, legislatures will sometimes put into an appropriation bill one or more items of doubtful expediency, while the great body of the bill is in

every way satisfactory. The executive, while not approving these clauses, will often sign the bill, because it would take so much time to reënact another bill omitting the unsatisfactory features. Here the governor need not sign provisions he does not approve, just to get others that are desirable. The veto power does not extend to initiative and referendum legislation.

112. Judicial Duties of Governor. In Article VI, sect. 10, the constitution provides that the governor has the power to grant, after conviction, reprieves, commutations, paroles, and pardons for all offenses except cases of impeachment. In this way the governor can vary judicial decrees on the criminal side. Civil, i.e. property, judgments cannot be changed by him. A reprieve is delaying the execution of a sentence so that alleged new facts may be presented, which may lead to further executive clemency. If the governor changes a sentence, it is termed a commutation. The executive can lessen, never increase, the severity of the punishment. To parole a prisoner is to let him out on good behavior. A pardon is the granting of full immunity from some court sentence. These powers are given the governor to prevent miscarriage of justice, and the people generally demand that the executive use his judicial authority sparingly and only after mature deliberation. The governor can exercise none of his judicial functions, other than to put off the day of execution of a convicted murderer, without first receiving the sanction of the state board of pardons (see § 130).

113. The Lieutenant Governor. The lieutenant governor presides over the senate. He is also a member of the state banking board. His qualifications must be the same as those for governor. His salary is $1000 per year. If the governor should die or become incapacitated in any way during his

term of office, the lieutenant governor at once becomes governor. In the absence of the governor and the lieutenant governor the president *pro tempore* of the senate becomes chief executive.[1] In case none of these can serve, the speaker of the house of representatives becomes acting governor (Art. VI, sect. 15). The legislature is empowered to make further provisions for the succession. If the governor leaves the state even for a day, the lieutenant governor becomes the acting governor. Because of this the state's chief magistrate is generally careful never to leave the commonwealth when important matters are pending.

114. The Secretary of State. A register of all the official acts of the governor must be kept by the secretary of state. When requested he must attest these, and lay copies of the same, together with copies of all papers relative thereto, before either house of the legislature (Art. VI, sect. 17). He is custodian of the great seal of the state,[2] and with it he must

[1] This provision for the succession in the state is the same as the national law up to 1886. In that year the national succession law was altered so that the cabinet members succeed to the presidency in case of a vacancy, according to their rank (see Boynton, pp. 189–190).

[2] The seal was devised by the Hon. Gabe Parker, a Choctaw-Indian delegate to the constitutional convention. The large star represents Oklahoma, the forty-sixth state. In its center is the seal of Oklahoma Territory. The upper left-hand ray contains the seal of the Cherokee Nation, the Chickasaw seal is on the ray pointing directly up, the upper right-hand ray contains the Choctaw emblem, beneath it is the Seminole seal, and the lower left-hand ray contains the ancient seal of the Creeks. The small stars represent the other forty-five states in the Union.

authenticate (stamp) all official acts of the governor except his approval of laws. In the secretary of state's office is kept the parchment copy of the constitution and all acts of the legislature, just as they are engrossed and signed by the governor. The vetoed bills are likewise kept in the vaults in the office of this official. Initiative and referendum petitions are sent to the secretary of state, addressed to the governor; and all election returns for state officers are sent to him, although they are addressed to the speaker of the house of representatives. He is elected for a term of four years at a salary of $2500 per year.

115. The State Auditor. In many states the auditor is called the comptroller. It is his duty to manage the financial affairs of the state. He examines and adjusts accounts and claims against the commonwealth. When money is to be expended the auditor draws a warrant on the treasurer. His books and those of the treasurer are kept entirely separate, but must agree as to the amount of money on hand in the treasury. In this way mistakes in the state's finances can be avoided or any shortage discovered. The state auditor is elected for a term of four years, at a salary of $2000 per year.

116. The Attorney-General. It is the duty of the attorney-general to act for the state in all lawsuits where the state is a party. He prosecutes certain criminal cases where county attorneys fail to act, and also when necessary brings suit to collect all moneys due the state. He enforces the law, especially against corporations and wealthy individuals too powerful to be successfully resisted by county attorneys. It is the duty of the attorney-general to render opinions on questions of law submitted to him by the governor and other state officers. He is elected for a term of four years, at a salary of $4000 per year.

117. Superintendent of Public Instruction. The entire public-school system of the state is under the general supervision of the superintendent of public instruction. He is the chairman of the state board of education and other numerous boards that have to do with the public schools of the state. Uniform teachers' examinations are prepared under his supervision, and the general educational interests of the state are promoted. He is elected for a term of four years, at a salary of $2500 per year.

118. State Treasurer. The state treasurer has the care of all the moneys of the state. He pays out the same on warrants that are signed by the auditor. The state treasurer collects no money directly from the taxpayer, but receives the state tax money from each county treasurer as the latter collects it. An accurate account of all moneys expended by the state is kept by the treasurer as well as by the auditor. He is elected for a term of four years, at a salary of $3000 per year.

119. State Examiner and Inspector. The constitution provides that, without giving any warning, the state examiner and inspector shall twice each year take complete possession of the state treasurer's office, and of every county treasurer's office, and make a thorough examination of the books, accounts, and cash in hand. Once each year he is to publish in his report the condition of every such treasury. He is also to provide a uniform system of bookkeeping for the use of all treasurers; and other duties may be assigned him by law. The state examiner must have had at least three years' experience as an expert accountant (Art. VI, sect. 19). He is elected for a term of four years, at a salary of $3000 per year.

120. Commissioner of Labor. The department of labor is under control of the labor commissioner. The legislature

must create a board of arbitration and conciliation in the labor department, and the commissioner of labor shall be ex-officio chairman (Art. VI, sect. 21). He is elected for a term of four years, at a salary of $2000 per year.

121. Insurance Commissioner. The insurance department is under the supervision of an insurance commissioner. He is charged with the execution of all laws in relation to insurance and insurance companies doing business in the state. The insurance commissioner must be at least twenty-five years of age and well versed in insurance matters. He is elected for a term of four years, at a salary of $2500 per year.

122. The Chief Mine Inspector. All mineral, oil, and gas interests in the state of Oklahoma are under the supervision of the chief mine inspector. No person shall be elected to said office unless he shall have had eight years' actual experience as a practical miner, and such other qualifications as shall be prescribed by the legislature. The constitution also provides that the legislature shall create mining districts and provide for the appointment or election of assistant inspectors therein, who shall be under the general control of the chief mine inspector (Art. VI, sect. 25). He is elected for a term of four years, at a salary of $3000 per year.

123. Commissioners of Charities. A commissioner of charities and corrections may be of either sex, and shall be twenty-five years of age or over; in all other respects said officer shall have the qualifications which shall be required of the governor (Art. VI, sect. 25). This is the only state office that can be held by a woman. The commissioner of charities must make a report once each year (October 1), and at any time, on the request of the governor, regarding all the public charities and corrections with which the

commissioner has to do. A peculiar section of the constitution (Art. VI, sect. 30) gives the legislature power to alter, amend, or add to the duties of, or grant additional authority to, such commissioner. Here is an instance where the legislature can change the constitution without the matter being referred to the people. The commissioner is elected for a term of four years, at a salary of $1500 per year.

124. State Printer. It is the duty of the state printer to superintend, supervise, and contract for all public printing and binding required by the legislature, the governor, supreme court, state officers, or any state board or commission created under the laws of the state. He also contracts for all bound books and records required by the district courts, counties, and townships of the state. This office was created by the first legislature. The state printer is under the authority of the state printing board, composed of the governor, state treasurer, and state auditor. The term of the state printer is for four years, at a salary not to exceed $2500 per year.

125. Text-Book Commission. The text-book commission consists of seven members, six of whom are appointed by the governor and confirmed by the senate. The seventh member is the governor himself. The appointed members serve for five years unless sooner removed. It is the duty of this commission to contract with publishers and authors for all books, registers, records, charts, maps, globes, and other apparatus to be used in the common schools of the state. The object of this commission is to obtain satisfactory, uniform text-books for the entire state at the lowest possible price. At an appointed time the commission receives sealed bids for all texts, records, apparatus, etc. (see chap. xii, § 200). It is made a misdemeanor to use other text-books than those

adopted, and it is a like offense for any one to charge more than the contract price for them. The salary of the members of this commission is six dollars per day while on duty, and actual traveling expenses in going to and from the place of meeting.

126. Corporation Commissioners. There are three corporation commissioners. This board has extensive authority over semipublic corporations. Its duties are so numerous and its powers so far reaching that one of the longest and most detailed articles of the constitution (Art. IX) is given over to its functions. The salary of these officials is $4000 per year, the term of office six years. One commissioner goes out every two years, so the commission is always able to transact business. The duties of this commission will be further developed in Chapter XIV.

127. State Board of Agriculture. A nonpartisan board composed of eleven members, all of whom are farmers, constitute the state board of agriculture. The members of this board are chosen by delegates elected by the farmers at their county institutes. One delegate from each county institute attends the state institute, and these delegates elect ten members (two from each supreme court district) to serve on the state board of agriculture. The president of the board makes the eleventh member. His position is an elective office. This board is maintained as a part of the state government, and has jurisdiction over all matters affecting animal industry and animal quarantine regulations, and is the board of regents of all state agricultural and mechanical colleges. The term of the president of state board of agriculture is four years, at a salary of $2500 per year. Other members of the board receive five dollars per day during actual time in session.

128. Commissioners of Land Office. The governor, secretary of state, state auditor, superintendent of public instruction, and the president of the board of agriculture shall constitute the commissioners of the land office, who shall have charge of the sale, rental, disposal, and managing of the school lands and other public lands of the state, and of the funds and proceeds derived therefrom, under rules and regulations prescribed by the legislature (Art. VI, sect. 32, chap. xii).

129. The State Banking Board. The state banking board is composed of the governor, lieutenant governor, president of the board of agriculture, state treasurer, and state auditor. These gentlemen have general supervision of all state banks, pass upon a bank's qualification and fitness to become a state depository, and have general supervision of all the bank examiners. This board also has the management of the *depositors' guarantee fund.* One per cent of all deposits in the state banks is levied and kept on interest by the state banking board. Thus a fund is created to pay off all depositors in case a bank so guaranteed fails. Through this guarantee fund depositors receive their money as soon as a bank fails. The state banking board then straightens up the affairs of the defunct bank, and, if possible, gets back out of funds due the bank the money which has been advanced to pay the depositors. This law is so popular in Oklahoma that one year after the passage of the measure no less than fifty national banks had surrendered their charters and become state banks.

130. The State Board of Pardons. An administrative board, consisting of the state superintendent, the president of the board of agriculture, and the state auditor, constitutes the state board of pardons. It holds regular meetings the

second Monday of each month, and more frequently if necessary. The governor can grant no pardon or parole except upon the recommendation of this board, but he can commute the death sentence to life imprisonment without its action. Before any public hearing for a pardon is held by the state board of pardons a legal notice announcing such a hearing must be published for two weeks in a weekly paper in the county where the crime was committed, so that those opposed to granting the pardon may be present, as well as those in its favor. Even after a pardon has been recommended by the board of pardons the governor can do as he chooses about granting it.

131. Dispensary. For the enforcement of prohibition a dispensary system has been adopted. A state agency is created under the supervision of a superintendent. This superintendent and all the agents under him are appointed by the governor, and they hold office at his pleasure.

132. State Board of Public Affairs.[1] This board consists of three members, not more than two of whom can belong to the same political party. The members of this board are appointed by the governor "for a term coterminous with that of the governor making the appointment." The governor is also given authority to remove any member of this board at his discretion. The board of public affairs has most extensive powers. It has charge of the construction, repair, maintenance, and insurance of all state buildings. It is a board of purchase for all state departments and state institutions. The members of the board are prohibited from engaging in any other business, and must each give a

[1] There are numerous other minor boards and commissions that assist in executing the law.

fifty-thousand-dollar bond before entering upon their duties. The salary is $3000 per year.

133. Increase and Decrease of Salaries. All officials having to do with the expenditure of state funds are required to give bonds for the faithful performance of their duty. An account shall be kept by such officers and commissioners of all moneys disbursed or otherwise disposed of severally by them, from all sources, and for every service performed; and a report thereof is made semiannually or as often as may be required by law, to the governor under oath. The governor may at any time require information in writing, under oath, from all officers and commissioners of the state, and all officers of state institutions, penal, eleemosynary, educational, and industrial, on any subject relating to their respective offices and institutions; which information when so required shall be furnished by such officers and managers; and any officer or manager who at any time shall make a false report shall be punished as by law provided. Each state officer shall, at stated times, during his continuance in office, receive for his services a compensation, which shall be neither increased nor diminished during the term for which he shall have been elected; nor shall he receive to his use any fees, costs, or perquisites of office or other compensation.

134. Nepotism Prohibited. Nepotism is appointing one's relatives to office. This is now prohibited in Oklahoma. The law makes it unlawful for any executive, legislative, ministerial, or judicial officer of this state to appoint or vote for the appointment of any person related to him by affinity or consanguinity within the third degree, to any clerkship, office, position, employment, or duty in any department of the state, district, county, city, or municipal government. The

law applies alike to relationship by marriage as by blood. And it is further made unlawful for officials to appoint one another's relatives to office and thus circumvent the law. This act extends to all school boards and regents of state institutions. No teacher can be elected by a board of education if he is related by blood or marriage to any member of that board. It is provided that any official guilty of appointing a relative to office shall be punished by a fine of not less than one hundred nor more than one thousand dollars, and shall forfeit his office.

CHAPTER IX

JUDICIAL DEPARTMENT

135. The Judicial Power. The judicial power of the state is vested in the senate, sitting as a court of impeachment, a supreme court, criminal court of appeals, district courts, superior courts (chap. iii, § 48), county courts (chap. iii, § 49), courts of justice of the peace (chap. i, § 9), municipal courts (chap. ii, § 24), and such other courts, commissions, or boards, inferior to the supreme court, as may be established by law (Art. VII, sect. 1 ; also Boynton, p. 279).

136. Impeachment. A trial for misconduct in office is termed impeachment (Boynton, pp. 148–151). The constitution provides that the governor and other elective state officers, including the justices of the supreme court, shall be liable and subject to impeachment for willful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any offense involving moral turpitude committed while in office (Art. VIII, sect. 1). The house of representatives presents all impeachments by a majority vote. This method is similar to that of the grand jury presenting an indictment. The senate then tries the case, exercising functions similar to a petit jury. A two-thirds vote is necessary for conviction. When the senate is sitting as a court of impeachment the senators shall be on oath, or affirmation, impartially to try the party impeached ; and no person shall be convicted without the concurrence of two thirds of the senators present (Art. VIII, sect. 4).

137. Removal of Officials not Subject to Impeachment. All elective officials are subject to removal from office for just cause. This is done by the chief justice; or, if he is absent or disqualified, then one of the associate justices of the supreme court, to be selected from it, acts in his stead. When a supreme court justice is impeached he is tried by the senate. Members of the house of representatives and of the senate cannot be impeached. The only way they can lose their office is to be expelled by the house of which they are a member, and each house is sole judge of the qualifications of its members. *Judgment of impeachment* shall not extend beyond removal from office, but this shall not prevent punishment of any such officer on charges growing out of the same matter by the courts of the state (Art. VIII, sect. 5).

138. Supreme Court. The supreme court (Boynton, p. 280) consists of five judges nominated from districts but voted upon by the people at large. The term is six years. The salary of supreme court justices is $4000 per year. Each supreme court judge is in turn chief justice for one year during his term of office.

139. Jurisdiction. The supreme court has both original and appellate jurisdiction. Original jurisdiction means that the case can be started before it. The original jurisdiction of the supreme court shall extend to a general superintending control over all inferior courts and all commissions and boards created by law. The supreme court has power to issue writs of habeas corpus, mandamus, quo warranto, prohibition, and such other remedial writs as may be provided by law (Art. VII, sect. 2). But the supreme court rather discourages hearing cases in the first instance, and so most of its work comes under its appellate jurisdiction. If either party to a suit in the

district, superior, or county court is dissatisfied, he can appeal. This is done by sending a transcript or an account of all that happened in the lower court up to the supreme court. This transcript is carefully read by all the judges, to see whether the trial court decided according to law and evidence. If the decision was right, it is sustained by the supreme court; if it was not, it is reversed and sent back to be tried over again.

140. Supreme Court Clerk. This is an elective office under the constitution. The duty of the clerk is to keep the records of the supreme court and of the criminal court of appeals. Such decisions have the authority of law, and are followed by all lower courts in the state in rendering opinions, unless said opinion has been altered by a more recent statute or constitutional enactment. He also serves as clerk of the criminal court of appeals. His term is four years and he is paid by fees. There is also a *state reporter*, whose duty is to arrange and supervise the printing of all decisions of the supreme court and the criminal court of appeals. He is elected by the eight judges who constitute these two courts. His term of office is at the pleasure of these courts. His salary is $2000 per year.

141. Supreme Court Marshal. The marshal is the executive officer of the supreme court and of the criminal court of appeals. He keeps order in the court room and serves all writs for the judges. If necessary, he can call on the citizens to assist him in enforcing a court order. He is chosen for a term of four years, at a salary of $1500 per year.

142. Criminal Court of Appeals. The criminal court of appeals was organized because of the congested condition of the supreme court docket. It consists of three judges appointed by the governor. They hold office until January,

1911, at which time judges to succeed them will have been elected. The term of office is six years, but in order that the term of only one judge will expire every two years, the first judges elected will cast lots to decide which one of them will serve two, four, and six years respectively. The salary is $4000 per year.

143. Jurisdiction of Criminal Court of Appeals. The criminal court of appeals has exclusive appellate jurisdiction in all criminal cases appealed from county, superior, or district courts.

144. District Court. Because of its great authority and direct contact with the people, the district court is the most important instrument of government in the state. The district judge may at any time have to pass judgment upon any person in his district, taking from that person property, liberty, or even life. It is therefore extremely important that the highest type of citizen, one versed in the law, be elected to this office.

145. District Judge: Salary and Qualifications. Recognizing the importance of this office, the framers of the constitution sought to so make our fundamental law that only men of high character and attainment would be chosen. This was done by making the salary ($3000) large enough to attract men of ability, and by making the qualifications such that only competent lawyers could meet them. The district judge must be a citizen of the United States, must have resided in the state for two years, and in the territory comprising his district at least one year prior to his election; and he must be a lawyer licensed by some court of record. Residence in his district during his term of office is required (Art. VII, sect. 9). His term is four years.

146. Jurisdiction of District Court. The district courts have original jurisdiction in all cases, civil and criminal, except where exclusive jurisdiction is, by the constitution or by law, conferred on some other court, and they have such appellate jurisdiction as may be provided in the constitution or by law. The district courts, or any judge thereof, have power to issue writs of habeas corpus, mandamus, injunctions, quo warranto, certiorari, prohibition,[1] and other writs, remedial or otherwise, necessary or proper to carry into effect their orders, judgments, or decrees. The district courts also have the power of naturalization in accordance with the laws of the United States (Art. VII, sect. 10) (Boynton, pp. 138–139). Appeals may be taken from the decision of a justice or a municipal court to the district court. The district court is a court of record ; appeals are taken from it direct to one of the supreme courts. So it will be seen that if a suit is begun in a municipal court, two trials can be had, one in the lower court and one in the district court. If, however, a case is begun in the district court, but one trial is held. When an appeal is taken to the supreme court or criminal court of appeals, the case is not tried again. The supreme judges merely review the record sent up from the district court. There may be an error, in which case a new trial is ordered, which will be held in the same court where the error was made. Sometimes one takes change of venue to avoid the prejudice of a judge or a community. If the trial judge thinks there is sufficient reason, he may let the case be taken into another district where a judge and the people are less acquainted with the facts in the case. This expedient is often resorted to in case of homicide. But it is in a district court that final trial of the case is held.

[1] The instructor should explain clearly the meaning of each of these writs (see next section).

147. Law distinguished from Equity. The paragraph just above, relating to civil and criminal cases, has chiefly to do with that branch of jurisprudence that is technically termed "law." It sprang up from the old English common law. Generally a jury of twelve men decides the facts, and the duty of the judge is to see that the law is strictly adhered to in presenting the evidence to the jury, so that no unfair or illegal advantage is taken of either party in the case. We have seen that (chap. i, § 1) custom-made law is the much larger body of our jurisprudence. Sometimes custom is enacted into statute law by the legislature, i.e. written down and defined. "Equity," or chancery as it is sometimes called, grew up through the church courts of the early English. It was found that there were some cases where damages were no remedy. But damages is the only civil remedy at law, so chancery courts stepped in and enforced specific decrees. Thus, suppose that a man meant to turn a river across your land; no damages would compensate you for the loss of your home if you did not want to move. Here you would bring a suit in chancery, and the judge would enjoin the man from persisting in his efforts to change the natural course of the river. Injunction, therefore, is to stop one from committing an injury to some one else. Mandamus, another remedy in equity, is to compel men to do that which they ought to do. Thus, suppose a writ is placed in the possession of the sheriff and he refuses to serve it; under the law it is his duty to do so, and the remedy for his misconduct is for the injured party to obtain a writ of mandamus from the court, compelling him to perform his duty and serve the writ.

148. District Courts: Equity Jurisdiction in Oklahoma. It is, as a rule, the extent of equity jurisdiction that marks

the difference between a superior and an inferior court. We noticed under the discussion of the twenty-fifth section of the bill of rights how our basic law limits the authority of an Oklahoma court to punish for contempt (chap. v, § 69). If the alleged contempt occurs out of the presence of the court, there must be a trial by jury to determine whether or not the contempt has been committed. In other respects the equity powers of an Oklahoma district court are as extensive as those of any similar state court, and therefore this court exercises the highest authority and is a tribunal of the highest dignity.

149. Verdict. The decision arrived at by a jury is termed "a verdict" (Boynton, p. 364). In most cases the verdict assesses money damages against the party at fault. In criminal cases the judgment may be either a fine, that is, the convicted person must pay a sum of money; imprisonment, that is, his liberty is taken from him; death, that is, his life is taken, because, it is reasoned, if he continue to live he will be a menace to society. The jury brings in the verdict of guilty or not guilty in criminal cases in accordance with the instructions of the judge (chap. v, § 68). In civil cases the verdict states the amount of damages. The judge then renders judgment in accordance with the law. Frequently in criminal cases the judgment is both a fine and imprisonment.

CHAPTER X

ELECTORS AND ELECTIONS [1]

150. Suffrage. Qualified electors are male citizens of the United States twenty-one years of age, who have resided in the state of Oklahoma one year, in the county six months, and in the election precinct thirty days next preceding the election at which the elector offers to vote (Boynton, p. 99, p. 270). No person adjudged guilty of a felony after the adoption of the constitution, subject to such exceptions as the legislature may prescribe, unless his citizenship shall have been restored in the manner provided by law; nor any person, while kept in a poorhouse or other asylum at the public expense, except federal and confederate ex-soldiers; nor any person in a public prison, nor any idiot or lunatic, shall be entitled to vote at any election under the laws of this state (Art. III, sect. 1).

151. Soldiers and the Suffrage. A soldier who enlists from Oklahoma can always vote in the town he enlisted from, so long as he is in the army. But a soldier who is stationed in Oklahoma does not become a resident of the state because he happens to be quartered here. His being a soldier in Oklahoma does not make him a citizen of the state.

[1] The legislature of 1909 passed an election law radically altering the provisions as given in this chapter. The new measure has met energetic opposition, and a referendum has been demanded upon it (see chap. vii, §§ 101, 102). The election upon this referendum may not be held until November, 1910, and at that time the new law may be defeated, so the statute as given here remains in full force and effect until disposed of by the people. (See Appendix C for discussion of this suspended law.)

152. Time of Elections. General elections (Boynton, pp. 270–271) for the purpose of electing congressmen, state, legislative, and county officers, occur on the first Tuesday after the first Monday of the even-numbered years. Municipal elections occur yearly on the first Tuesday in April. Special elections may be called at any time by the governor to fill vacancies in the legislature or to take a referendum vote.

153. Elections and Electors not to be interfered with. The election shall be free and equal. No power, civil or military, shall interfere to prevent the free exercise of the right of suffrage, and electors shall, in all cases except for treason and breach of the peace, be privileged from arrest during their attendance on elections and while going to and from the same (Art. III, sect. 7).

154. Election Precincts. The county election board divides the townships into voting precincts, establishes the boundaries of the same, and designates at least one voting place in each township and city ward. There shall be but one voting place in each precinct. Each precinct should contain about two hundred voters, and in no case should the number exceed two hundred and fifty. Voting places are designated by the county election board.

155. State Election Board. The governor, within thirty days after his inauguration, shall name a state election board, subject to the approval and confirmation of the senate. This board consists of three members, not more than two of whom shall be of the same political party. The state central committees of the political parties casting the highest number of votes at the last general election each suggest the names of five electors, and the governor must appoint the members of the election board from this list. The salary of the members

of the state election board is three dollars per day for time actually engaged in the duties of the office. The term is for four years.

156. Duties of State Election Board. The state election board has general supervision of all elections in the state, both primary and general. It appoints the county election boards, prepares the ballot for both the primary and the general election, decides who have been properly nominated for office, and canvasses the returns for all state elections and for district elections where the district is not a subdivision of a county. It also issues certificates of election to the various successful candidates who come within its jurisdiction.

157. County Election Board. This board consists of three members appointed by the state election board. The county central committees of the two largest political parties each submit five names to the state board, just as the state central committees of the parties submit names to the governor. The county election board must be appointed from these lists. Not more than two of the three members can come from the same political party. This board supervises the election in the county, just as the state board does in the state. It canvasses the returns from the county and issues certificates of election to the successful county candidates.

158. Precinct Election Board. From lists of five, just as in the case of the state and county boards, the precinct election board is chosen by the county board. This board actually conducts the balloting. One of these three officials is termed inspector, another judge, and the third clerk. If any one of these three officials is disqualified or fails to qualify on the precinct boards, his colleagues shall appoint

his successor from the ranks of the party to which he belonged, and, if possible, from the list previously submitted. This board issues certificates of nomination for precinct officers.

159. Official Counters. On the Friday preceding the election it shall be the duty of the precinct election board to choose four official counters. They shall be equally distributed among the political parties, and in no case shall more than three counters come from one party. At ten o'clock on the morning of the election these counters, having first voted and taken the proper oath, shall begin to count. The count is to be kept secret until the entire poll is counted. Violation of this provision subjects them to severe fine and jail sentence. A careful record of all votes cast is kept and certified to the county election board; and the vote on state officers and such district officers as come under the jurisdiction of the state board is in turn certified up to it. The ballots are hung on a string as counted. When all the votes are recorded these tickets are securely tied, sealed, and delivered to the county election board.

160. The Ballot. In the general election the ballot is made up by the state and county boards on or before the first day of September preceding the November general election. These boards also make up the ballot for the primary. The copy for the ballot must be delivered to the printer by October first. By the last week in October the state board must deliver the state ballots to the county boards, and the county boards must also have obtained the county tickets from the printer. All ballots for a general election must be on white paper and bound in books. Sample ballots are on cheap yellow paper.

NEVER DETACH THIS NUMBER FROM THE STUB **№ 6425**

Voters Name .....Post Office .....

Street Number .....If Voter is Challenged, Write.....Here. If Voter was challenged

Sworn, Write.....Here. If Ballot is Spoiled or Not Voted, Write.....Here.
sworn spoiled

Remarks .....

№ 6425 WHEN VOTER RETURNS BALLOT DETACH THIS NUMBER

GRADY COUNTY, WASHINGTON TOWNSHIP, FAIR GROUNDS PRECINCT.

DEMOCRATIC	REPUBLICAN	SOCIALIST	INDEPENDENCE PARTY	PEOPLES PARTY
For Presidential Electors (vote for seven.)	For Presidential Electors (vote for seven.)	For Presidential Electors (vote for seven.)	For Presidential Electors (vote for seven.)	For Presidential Electors (vote for seven.)
S. M. RUTHERFORD	WILLIAM BUSBY	I. N. JOHNSON	R. C. HANSEN	HORACE E. STRAUCHEN
GEO. C. WHITEHURST	J. C. ROBERTS.	CHAS. T. WATKINS	S. W. MAYTUBBY	R. L. SCOTT
GEO. L. BOWMAN.	EMORY FOSTER	JULIUS H. ELLIS	C. O. YOUNG	J. T. CRAIG
D. W. DRENNON	ABEL J. SANDS	O. P. MILLARD	C. C. ZIEGLAR	E. M. SMOOT
E. A.McDOUGAL	E. O. CLARK		J. W. WALLACE, Jr.	JESSE L. SWANGO
PRESTON S. LESTER	BRUCE KENAN		F. C. BURKHART	J. N. NANCE
J. E. GIBBONS	WILLIAM McKOY		M. K. AKIN	L. P. BARKER
For Justice of Supreme Court Second District (vote for one in this district.)	For Justice of Supreme Court Second District (vote for one in this district.)	For Justice of Supreme Court Second District (vote for one in this district.)	For Justice of Supreme Court Second District (vote for one in this district.)	For Justice of Supreme Court Second District (vote for one in this district.)
R. L. WILLIAMS				
For Justice of Supreme Court Fourth District (vote for one in this district.)	For Justice of Supreme Court Fourth District (vote for one in this district.)	For Justice of Supreme Court Fourth District (vote for one in this district.)	For Justice of Supreme Court Fourth District (vote for one in this district.)	For Justice of Supreme Court Fourth District (vote for one in this district.)
SAMUEL W. HAYES	JOSEPH T. DICKERSON	A. W BENNETT		
For Corporation Commissioner	For Corporation Commissioner	For Corporation Commissioner	For Corporation Commissioner	For Corporation Commissioner
A. P. WATSON	WILLIAM H. REYNOLDS	ROY O'BRYAN		
For Congressman 5th District	For Congressman 5th District	For Congressman 5th District	For Congressman 5th District	For Congressman 5th District
SCOTT FERRIS		W. D. DAVIS		
For State Senator	For State Senator	For State Senator	For State Senator	For State Senator
GEO. O. JOHNSON		J. B. SHIELDS		
For Representative (vote for two.)	For Representative (vote for two.)	For Representative (vote for two.)	For Representative (vote for two.)	For Representative (vote for two.)
HENRY IRSTON	J. P. POPE			
R. L. GLOVER	M. S. McCOBB			
For Plotorial Representative	For Plotorial Representative	For Plotorial Representative	For Plotorial Representative	For Plotorial Representative

☞ To vote the Democratic Ticket, stamp **X** in circle under the Rooster.

☞ To vote the Republican Ticket, stamp **X** in circle under the Eagle. The same wording as to other Parties.

☞ Should a voter desire to vote a mixed ticket, stamp in circle under devise of the party, then cross over in columns containing other names and stamp **X** in the square opposite name of candidate you desire to vote for.

☞ After you have voted, fold ballot over to perforated line and return to election officers.

161. Ballot Stub. Each ballot has a stub. On this stub is left a blank for the voter's name, post office, street number, a place to write "challenged" if he is challenged, to write "sworn" if he is sworn, and another blank to write "spoiled" if the ballot is mutilated. In the upper left-hand corner of the ballot there is a number corresponding to the number on the stub. If a voter is challenged, this number serves to identify the identical ballot cast by the person whose vote was questioned. If it is found he voted illegally, his vote can be cast out and the person himself punished.

162. Registration. In cities of the first class the election inspector for each precinct must keep open the precinct registration books during the entire month of July. He shall also keep his books open for registration during the last week in October. For this he receives a fee of three cents for each name registered. This is paid by the city. All electors must register here if they wish to vote, unless prevented by some unavoidable circumstance, such as sickness or absence from the city. The object of registration is to get the list of all men claiming to be qualified electors in the city. It is more difficult in congested centers of population to detect fraud at elections, and registration aids in ferreting out the men who mean to vote illegally. Men can be punished for fraudulent registration, the same as for fraudulent voting.

163. Political Parties Recognized. In no particular does the national constitution vary more greatly from what its framers intended than in the election of President (Boynton, pp. 183–184). The people choose members of an electoral college, as many from each state as the commonwealth has senators and representatives. These men do the actual voting

for President. The Fathers intended that the presidential electors constituting the electoral college should vote for the men they thought best fitted for President and vice president, independent of party; but since the time of Jefferson (Boynton, pp. 309–325) political parties have stepped in and selected the men to be voted for. Since political parties do exist, and since the choice for all officials is limited to the few men these parties pick out, the builders of the Oklahoma constitution decided to regulate the manner in which political parties shall choose their candidates. This is done at what is termed a primary election.

164. Mandatory Primary. "The legislature shall enact laws providing for a mandatory primary system, which shall provide for the nomination of all candidates in all elections for state, district, county, and municipal officers, for all political parties, including United States senators: provided, however, this provision shall not exclude the right of the people to place on the ballot by petition any nonpartisan candidate" (Art. III, sect. 5). A mandatory primary election law was enacted by the first legislature in accordance with this constitutional provision. All candidates of political parties must be chosen at a primary which is held the first Tuesday in August of every even-numbered year. The officers provided by the general election law also have control of the primary. The voting places are the same, and the ballot is as nearly as possible like that used at the general election. However, only candidates of one party appear on one ticket, and the tickets of the respective parties must be of different colors. The July registration in cities of the first class is for the benefit of the primary. The entire expense of this election is borne by the state and local governments, just as is the case in a

general election. The officers voted for include every one who represents the people, from precinct committeemen and delegates to the state convention where the party platform is now made, up to the highest office in the gift of the people.

165. Nominating Petitions. In order that a candidate may have his name upon a primary ballot, he must present a petition to the proper election board. Any candidate for an office where the electors of the entire state shall vote, or a candidate for the legislature, or in any district larger than a county, must present his petition to the secretary of the state election board. A candidate in a county or a division smaller than a county files his petition with the secretary of the county election board. Candidates for the United States senate [1] are voted for at the primary the same as other candidates.

166. Primary Election and Ballot. The election is conducted exactly like a general election, only instead of having the names of all candidates on one ticket, separate ballots are printed for each party, and a voter on entering the election booth announces his party and is given the proper ticket. The ballot is similar in form to the one presented earlier in this chapter, except that there is no party insignia upon it.

167. Nonpartisan Nominations. If one belongs to no political party, he cannot vote at the primary; but nonpartisan nominations can be made by exactly the same method used to petition names upon the primary ballot of the several political parties. These petitions are filed in the same way that party petitions are filed, and at the same time.

[1] United States senators are not elected by the people, nor is a political party bound to nominate a candidate in order to have his name considered at the time the legislature meets in joint session. But such a vote is regarded as instructing the legislators as to what the people desire, and the legislature is apt to follow the express will of the people.

168. How to Vote. At the primary one must stamp in the square to the left of the names of the men for whom he desires to vote. At the regular election, to vote a straight ticket, stamp in the circle beneath the device (Boynton, p. 271). To vote a mixed ticket, stamp in the square to the left of the name of each candidate for whom it is desired to vote. Or if one stamps in the circle beneath the device and then crosses over and votes for certain candidates in other columns, his vote will be counted for the candidates beneath the device, except where he has indicated a preference for some other candidate.

169. Corrupt Practice at Elections. Since primary elections are now as much under sanction of law as are the general elections, it has been deemed necessary to provide penalties for violations of its provisions even more stringent than for the general election. Corporations are especially forbidden in any way to participate in elections. It is a penitentiary offense to bribe a voter. Election officers are likewise severely punished for failing to do their duty; and any one who brings intoxicating liquors of any kind within one half mile of a voting place is guilty of a misdemeanor.

170. Limitation on Amount of Money to be Spent. There seems to be no limit placed upon the amount a candidate may spend to secure his election after he is nominated, but he is strictly limited as to what he can spend in order to secure a nomination. The amount[1] is in proportion to the

[1] Candidates for United States senator or governor are not to spend an amount exceeding $3000; other state offices, $1500; supreme judge, $1000; Congress, $800; district judge, $500; state senator, $250; representatives in a district larger than a county, $250; county candidates, $200; subdivision of county, $50; mayor (cities over 15,000), $200; other city officials (cities over 15,000), $150; mayor (cities less than 15,000), $100; other officials (cities less than 15,000), $50.

relative importance of the office. The law aims to prevent rich men, by a lavish use of money, from obtaining nominations. It also seeks to make it possible for a person of limited means to aspire to the highest office in the gift of the people. If a candidate violates this provision, he not only forfeits his right to have his name printed on the primary ballot, but is also guilty of a misdemeanor, and on conviction shall pay a fine of not less than one hundred dollars nor more than two thousand dollars, and suffer a jail sentence as well. And even if a person is elected to an office, and it is found that he has violated the corrupt-practice features of the state election laws, he shall not be entitled to hold such office. Newspapers are compelled to announce political advertising as such, so that the voter will not be deceived into believing that purchased space in the paper is the editorial opinion of the publisher.

171. Publicity. Before the state and county election boards give out any certificates of nomination or election they must give out for publication a statement of each candidate's expenditures and all that was spent in his behalf by his several agents. Within ten days after a primary or general election, as the case may be, the campaign committees, both of individuals and of parties, must file a complete list of all money which came into the hands of such committees.

CHAPTER XI

TAXATION AND PUBLIC DEBTS

172. Taxation. Of all governmental functions taxation is the most important. Any student of American history must have noticed that the century-old struggle in England and America was directed chiefly against the king's attempt to levy taxes without the consent of those taxed. And to-day the most difficult problem statesmen have to meet is to equitably adjust the burdens of government upon each man according to the benefit he receives from the government, and according to his ability to help support it. In no respect has the constitution of Oklahoma gone further from the commonly accepted custom in America than in the matter of taxation. The Oklahoma constitution was so written that those men who obtained the greatest financial benefit from the state and its system of laws should contribute most to the state's support. The power to tax can never be surrendered, suspended, or contracted away, but must always remain a function of the state.

173. Assessment. The township trustee is the assessor in rural communities (chap. i, § 6). Cities and towns elect an assessor each year (chap. ii, § 22). As soon as possible on or after the first Monday of March of each year it is the duty of the assessor to make a list of the property of each person residing within the township or city which he is to assess. All assessments must be completed and the assessment rolls turned over to the county clerk by the township and municipal

assessors by the first Monday in May. All property is to be assessed to the person who owned it on the first of March, no matter if it has been sold after that time and before the assessor calls upon him. All property is listed in schedules and at actual cash value. The taxpayer must take oath that he "give in" all his property at its true value before his returns are received. The assessor who shall commit any willful error in the performance of his duty shall be deemed guilty of malfeasance, and upon conviction thereof shall forfeit his office and be otherwise punished as provided by law. The various boards of equalization are as follows: townships, the township board; towns, assessor, president of board of trustees, and town clerk; cities, assessor, mayor, and city clerk; counties, board of county commissioners; state, governor, state auditor, state treasurer, secretary of state, attorney-general, state examiner and inspector, president of the board of agriculture.

174. Duties of Boards of Equalization. The duties of these boards are most important. On the third Monday in April the boards for the townships, towns, and cities meet to examine the assessment rolls of their respective localities. They hear all complaints of persons who feel aggrieved by their assessments, and correct, equalize, and adjust assessments by increasing or diminishing the amounts listed for any individual, when unjust. These boards may, if necessary, even require a reassessment of all property on the tax roll. On the first Monday in June the county board of equalization holds its sessions and equalizes the taxes of the respective political divisions of the county. As these tax rolls are made by as many different men as there are townships, towns, and cities in the county, no two lists are apt to be

made upon the same basis. Previous to making the assessment the assessors often hold a convention at the county seat and decide on a list by which to assess. Notwithstanding, there are bound to be discrepancies which need adjustment. What the county board of equalization does for one county the state board does for the entire state. This state board meets on the third Monday in June. It is the duty of this board to examine the various county assessments, and to equalize, correct, and adjust the same as between the counties, by increasing the aggregate assessed value of the property, or any class of property, in any of the counties, so that it conforms to the fair cash value. It can order the assessment rolls of any county so corrected. The state board of equalization also assesses all public service corporations.

175. Ad Valorem Tax. "Except as herein otherwise provided, the total taxes on an ad valorem basis for all purposes — state, county, township, city, or town, and school-district taxes — shall not exceed in any one year thirty-one and one-half mills on the dollar, to be divided as follows: state levy, not more than three and one-half mills; county levy, not more than eight mills, *Provided*, That any county may levy not exceeding two mills additional for county high school and aid to the common schools of the county, not over one mill of which shall be for such high school, and the aid to said common schools shall be apportioned as provided by law; township levy, not more than five mills; city or town levy, not more than ten mills; school-district levy, not more than five mills on the dollar for school-district purposes, for support of common schools, *Provided*, That the aforesaid annual rate for school purposes may be increased by any school district to an amount not to exceed ten mills on the dollar valuation, on

condition that a majority of the voters thereof voting at an election, vote for said increase " (Art. X, sect. 9). The assessment having been taken and an estimate made by the respective township, town, city, county, and state officials of what it will cost to run their respective offices the next year, then the rate of taxation can be ascertained. It is determined by dividing the estimated expense for the year by the assessed valuation. The tax roll is turned over to the county treasurer by the county clerk on or before October 1 ; on October 15 the ad valorem tax becomes due. All such taxes must be paid by January 1, or a penalty (i.e. extra charge) attaches.

176. Exemptions. " All property used for free public libraries, free museums, public cemeteries, property used exclusively for schools, colleges, and all property used exclusively for religious and charitable purposes, and all property of the United States and of this state and of counties and of municipalities of this state ; household goods of the heads of families, tools, implements, and live stock employed in the support of the family, not exceeding one hundred dollars in value, and all growing crops, shall be exempt from taxation. Provided, that all property not herein specified, now exempt from taxation under the laws of the territory of Oklahoma, shall be exempt from taxation until otherwise provided by law ; and provided further, that there shall be exempt from taxation, to all ex-Union and ex-Confederate soldiers bona fide residents of this state, and to all widows of ex-Union and ex-Confederate soldiers, who are heads of families and bona fide residents of this state, personal property not exceeding two hundred dollars in value. All property owned by the Murrow Indian Orphan Home, located in Coal County, and all property owned by the Whitaker Orphan Home, located in Mayes

County, so long as the same shall be used exclusively as free homes or schools for orphan children, and for poor and indigent persons, and all fraternal orphan homes, and other orphan homes, together with all their charitable funds, shall be exempt from taxation; and such property as may be exempt by reason of treaty stipulation existing between the Indians and the United States government, or by federal laws during the force and effect of such treaties or federal laws. The legislature may authorize any incorporated city or town, by a majority vote of its electors voting thereon, to exempt manufacturing establishments and public utilities from municipal taxation for a period not exceeding five years, as an inducement to their location" (Art. X, sect. 6). This clause of the constitution is self-explanatory. This long list of exemptions (Boynton, p. 281) from taxation is placed in the constitution because it is felt that either such property is a necessity to citizens in earning a living, or such institutions are a public benefit, and that they should not be charged with the burdens of government. The active members of fire and militia companies are also exempt from paying poll tax. Cities and towns are often much benefited by factories being located within their boundaries. They are allowed to aid the factory during the first of its struggle by exempting it from taxation.

177. Special Tax Provision. The legislature shall have power to provide for the levy and collection of license, franchise, gross revenue, excise, income, collateral and direct inheritance, legacy, and succession taxes; also graduated income taxes, graduated collateral and direct inheritance taxes, graduated legacy and succession taxes; also stamp, registration, production, or other specific taxes (Art. X, sect. 12). The

state may select its subjects of taxation, and levy and collect its revenues independent of the counties, cities, or other municipal subdivisions (Art. X, sect. 13). Under this provision of the constitution the state and its subdivisions are given an absolutely free hand in levying taxes so long as they are uniform upon the same class of subjects.

178. License and Franchise Taxes. Cities and towns may levy a license tax. In states where liquor is sold, the liquor license is of this character. The dog tax and drayman's license is also a license tax. A franchise tax is a demand that a semipublic corporation pay a portion of its receipts into the public treasury for the privileges granted. Street-car companies, lighting and water companies are often subject to such charges. When articles of incorporation are filed a fee of one tenth of one per cent of the authorized capital stock is charged. This is a license tax that is charged but once, but it is frequently a tax of large proportions. A railroad company that is incorporated for three million dollars must pay a license tax of three thousand before it can begin business in the state. The secretary of state collects so many fees and license taxes of this character that his office is one of the great revenue-gathering offices of the state.

179. Income Tax. It is the duty of the assessor to furnish the state auditor a list of all persons whose income is in excess of $3500, and upon which no gross receipt or excise tax has been paid. He shall also furnish a list of other persons in his township, who, in his opinion, may be liable for an income tax, and such persons can be compelled to make a statement under oath concerning their incomes. The tax all goes to the common-school fund, and is as follows: for the excess over $3500 and less than $5000, one half of one per cent; for

the excess over $5000 and less than $10,000, three fourths of one per cent; for the excess over $10,000 and less than $20,000, one and one-fifth per cent; for the excess over $20,000 and less than $50,000, two per cent; for all amounts over $100,000, three and three-tenths per cent. If a person neglects or refuses to pay his income tax, it becomes a lien on his property, the same as ad valorem tax, and if a false affidavit is made in connection with the collection of an income tax, the person is guilty of perjury. There is also a graduated income tax on the rents and profits of large farms that are not owned, but are held under title less than fee. The tax is one per cent upon the rents and profits of said farms for the excess over one section. It increases to ten per cent upon the rents and profits of said farms where such holdings exceed five thousand acres. This law was especially designed to reach the large holdings on the Indian Territory side of the state. Often men will be in possession of vast estates in this section of the commonwealth, and yet the title to the land will rest in the government.

180. Inheritance Tax. Property that passes by will or inheritance — bequests, legacies, etc. — is taxed in proportion to the amount of property that passes and the relationship of the person benefited. The county judge supervises the collecting of this tax. It is paid to the county treasurers and by them turned over to the state treasury. One half the sum derived goes to the common-school fund; the other half is applied to the expenses of the state government. Such a tax is levied by several states, and is becoming more and more a source of revenue for the support of state governments.

181. Exemptions from Inheritance Tax. All property transferred to corporations of this state organized solely for

religious, charitable, or educational purposes is exempt from this tax. Widows are allowed to inherit ten thousand dollars without being required to pay the tax, while children or parents of a deceased person can receive five thousand dollars' tax free. Other relatives can inherit in much smaller amounts without being obliged to pay the tax.

182. Graduated Land Tax. This law provides that every person can own three hundred and twenty acres (a half section) of land without paying any tax upon it other than the regular ad valorem tax discussed in a previous section. Any one can own as much as six hundred and forty acres of land of average taxable value and still pay only the usual ad valorem tax. The law declares that twenty dollars per acre shall be regarded as the average value of Oklahoma lands. Thus, if one owns more than a section of average-value land, or, in other words, has more than $12,800 invested in farm lands of greater acreage than half a section of average land, he pays one fourth of one per cent upon the excess; ten per cent per annum is levied if one is possessed of over ten thousand acres. Thus it will be seen that the tax is really prohibitory on large bodies of land. One could not afford to hold them and pay the tax. This law will probably tend to increase the number of landowners, and this doubtless was the intention of the framers of the law.

183. The Gross Revenue Tax. The first state legislature provided for the levy and collection of an extra tax upon all public-service corporations, and from all persons, firms, or corporations engaged in mining or in the production of oil or natural gas. Every company or person affected by this act must pay the state a gross revenue tax for the fiscal year ending June 30, 1909, and for each year thereafter. This

is in addition to the ad valorem tax previously mentioned. Sleeping-car companies pay three per cent and railroads pay one per cent. Those engaged in the production of coal pay one per cent; oil, gas, and other companies engaged in mining pay one half of one per cent of their gross production. If a firm or corporation fails or refuses to make a report to the state auditor's office of the amount of its gross revenue or production, the auditor is required to certify the name of the company to the district court, and the firm will be compelled to pay according to law.

184. Poll Tax. Every male between the ages of twenty-one and fifty years is required to pay a poll tax of two dollars, and must be listed by the assessor. Active members of fire and militia companies are exempt from this tax (Art. X, sect. 18).

185. Bonds. All laws authorizing the borrowing of money by and on behalf of the state, county, or other political subdivision of the state, shall specify the purpose for which the money is to be used, and the money so borrowed shall be used for no other purpose. A bond is an interest-bearing promissory note of the state, county, town, or district, agreeing to pay a certain sum of money at a given time. No law creating a bonded indebtedness can take effect until it shall, at a general election, have been submitted to the people and have received a majority of all votes cast for and against it at such election (Art. X, sect. 16). No bond of indebtedness of this state shall be valid unless the same shall have indorsed thereon a certificate, signed by the auditor and attorney-general of the state, showing that the bond or evidence of debt is pursuant to law and is issued within the debt limit. No bond or evidence of debt of any county, or bond of any

township or any other political subdivision of any county, shall be valid unless the same have indorsed thereon a certificate signed by the county clerk or other officer authorized by law to sign such certificate, and the county attorney, stating that said bond or evidence of debt is issued pursuant to law, and that said issue is within the debt limit (Art X, sect. 29).

186. The Debt Limit. The state may, to meet casual deficit or failure in revenue, or for expenses not provided for, contract debts, but such debts shall not at any time exceed $400,000, and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained, or to repay the debts so contracted, and to no other purpose whatever (Art. X, sect. 23).

187. War Debt not Limited. In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection, or to defend the state in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever (Art. X, sect. 24).

188. Sinking Fund. Counties, townships, school districts, cities, and towns shall levy sufficient additional revenue to create a sinking fund to be used (1) for the payment of interest coupons as they fall due; (2) for the payment of bonds as they fall due; (3) for the payment of such parts of judgments as such municipality may, by law, be required to pay (Art. X, sect. 28). It is also provided that the law shall provide for the collection of a direct annual tax sufficient to pay the interest on all bonded debts as it falls due, and also to pay and discharge the principal of such debts within twenty-five years from the time of the contracting thereof.

189. Bonds not to be voted to aid Private Enterprise. The credit of the state shall not be given, pledged, or loaned, to pay any individual, company, or corporation, or association, municipality, or political subdivision of the state; nor shall the state become an owner or stockholder in, or make donation by gift, subscription to stock, by tax, or otherwise, to any company, association, or corporation. The legislature shall not authorize any county, or subdivision thereof, — city, town, or incorporated district, — to become a stockholder in any company, association, or corporation, or to obtain or appropriate money for, or levy any tax for, or to loan its credit to, any corporation, association, or individual (Art. X, sect. 15). It has been a common practice in Oklahoma, as well as elsewhere in the Middle West, to vote bonds or city warrants to railroad companies as an inducement for them to build into the locality voting the bonds. This practice is now absolutely prohibited by the constitution.

190. Fiscal Year. The fiscal or business year of the state begins on the first day of July. All accounts are checked up to this date. Appropriations that have been made by the legislature but have not been entirely expended often revert back into the treasury at this time.

CHAPTER XII

PUBLIC-SCHOOL SYSTEM

191. Public Schools and the Enabling Act. The fifth section of the enabling act requires that provisions shall be made for the establishment and maintenance of a system of public schools conducted in English, open to all the children of the state, and free from sectarian control. It also provides that other languages may be taught in the public schools, and permits the establishment and maintenance of separate schools for white and colored children. The enabling act is higher law than the state's constitution, and therefore the state's school law had to be formulated in accordance with it.

192. Free Public Schools. Section 5 of Article I of the state constitution repeats this section verbatim. Ever since the earliest organization of Oklahoma Territory a free public-school system was maintained. The white people of Indian Territory did not have such good school advantages, although free public schools were maintained in the incorporated cities, and some free schools were supported by the federal government in rural sections. The Five Civilized Tribes had supported public schools for Indian children for more than a generation. As the laws of Oklahoma Territory were extended over Indian Territory on the adoption of the constitution, the school law of the Oklahoma portion of the new commonwealth became the law for the entire state.

193. Organization of Districts. The county superintendent can lay out a school district with such boundaries as he

sees fit. But such boundaries must be within reason. The district is said to be organized when its officers have been elected and qualified. No district shall be organized containing less than eight persons of school age. As there were no counties and consequently no school districts in Indian Territory until after statehood, county superintendents in that section had to organize a vast territory. This was done, as a rule, by forming the largest possible districts compatible with efficiency. Thus the advantage of so-called consolidated or township schools has, in many cases, been obtained from the very first.

194. District Officers. A director, clerk, and treasurer constitute the school board. Women as well as men are eligible to serve on any school board. At the annual meeting in 1908 the director was elected for three years, the clerk for two years, the treasurer for one year. Their successors will be elected for three years. The director presides at all district meetings, and he signs all warrants drawn by the district clerk on the treasurer. The clerk keeps all the books belonging to the district. He must transmit to the county clerk, on or before May 25 of each year, a list of all persons in his district liable to pay taxes. He must promptly report to the county superintendent all school officers elected, the commencement of each term of school, and the amount of school tax levied at the annual meeting. The treasurer must give a bond in double the amount of school money he is apt to handle each year. He must keep a careful report of all moneys received and expended, and make a full report at the annual district meeting. He can pay out funds only on warrants properly signed. If warrants are not paid for want of funds, he records same in the warrant register. Such warrants draw six per cent

interest until notice is given that funds are on hand to pay them. This notice being given, the interest stops after thirty days. Acting together these officers constitute the district school board, with duties that cannot be performed singly. Under instructions from a district meeting it can provide a schoolhouse and grounds. The board hires the teacher, procures fuel and supplies, and has general supervision of all school property. With the sanction of the county superintendent, it can dismiss a teacher for incompetency, cruelty, negligence, or immorality. The law provides that at least twice each term one member of the board visit the school.

195. Consolidated Districts. Experience has shown that the best results cannot be obtained in a one-room rural school, with one teacher to give instruction in all grades. Better results are obtained by consolidating two or more districts and erecting a suitable building at a central point. Teachers are then selected who are especially equipped for the work of the different grades, and better equipment is afforded. Such consolidated schools are to be found in most of the states of the Middle West, Oklahoma included. The law provides that a majority of those voting in each district must favor the proposition in order to consolidate. In case pupils live more than two miles from the schoolhouse, the district is compelled to transport them ; but it has been shown that this extra expense can be assumed by the enlarged district, and yet there will be no increase of school taxes, since it has been found cheaper and better to maintain one large school at a central point than three or four little inefficient schools at different points.

196. Annual Meeting : Voters. The annual school meeting is held the first Tuesday in June, at two o'clock in the afternoon. At this meeting the voters elect the district officer

whose term expires. A tax for the support of the school, not to exceed two per cent, is levied; and the length of term is decided upon, which must not be less than three months. A ballot box is seldom provided. Matters are generally discussed in open meeting and then voted upon by viva voce vote. Often all matters pertaining to school-board activities are discussed and decided. All persons, male or female, twenty-one years of age and citizens of the United States, or who have declared their intention to become such, who have resided in the state one year, in the township sixty days, and in the district thirty days, previous to the time of election, are qualified voters at a school election.

197. School Districts in Towns. The school board in the incorporated town is exactly the same as in the rural districts. Frequently adjoining rural territory is added to a town or city district, thus affording the country children living in the vicinity of a town or city the advantage of a much better equipped and more highly organized school.

198. Schools in Cities of the First Class. Every city of the first class is an independent school district. Contiguous rural territory is sometimes added to it. Each ward elects two members on the board. This board has general control of the schools of the city. It elects teachers and also a superintendent, neither of whom is under the supervision of the county superintendent. At the annual meeting, the first Monday in May, the board organizes by the selection of a president, vice president, and a clerk. The treasurer is elected by the people at the same time the board is chosen. The clerk gives a bond of one thousand dollars; the bond of the treasurer is prescribed by the board. The course of study in cities and towns is much more elaborate than in rural schools.

Cities of the first class maintain efficient instructors in the first eight grades, and generally have well-organized high schools. Special instructors in drawing and music and other branches are frequently provided. The constitution requires that the legislature shall provide for the teaching of the elements of agriculture, horticulture, stock feeding, and domestic science in the common schools of the state (Art. XIII, sect. 7).

199. Initiative and Referendum in School Districts. The rural school district in Oklahoma is almost a pure democracy. In towns and cities the republican form of administration naturally prevails. In matters of large outlay, such as the issue of bonds, the referendum was required in territorial days, and the constitution preserves the right of the initiative and referendum to the people of the state at large, and to the legal voters of every county and district therein (Art. V, sect. 5).

200. Uniform Text-Books. It is the duty of the legislature to provide for a uniform system of text-books for the common schools of the state (Art. XIII, sect. 7). By the adoption of a uniform series of books it is believed that school texts can be obtained at a greatly reduced price; that experts can select better books than those often in use; that uniformity will bring all schools of like grade in closer touch; and that children can be moved from schools in one portion of the state to those of another without loss of time or money. The text-book commission consists of six educators, appointed by the governor, by and with the consent of the senate. The governor is ex-officio chairman of this board. This commission selects a uniform set of text-books for all common and high schools of the state. The six appointed members hold office for a term of five years. Books selected are adopted for a term of five years, at the end of which period a new adoption is made.

201. County High Schools. The second state legislature repealed the county high-school law; but such high schools as were already in operation, or where the vote had been taken to establish such a school previous to the repeal of the law, were expressly excepted from the operation of the bill. Under this latter provision the county high schools at Guthrie, in Logan County, and at Helena, in Alfalfa County, will continue their educational work. Creek County will also soon (1909) establish such an institution at Mounds.

202. Separate Schools. The enabling act provides for the establishment and maintenance of separate schools for white and colored children. In districts having both white and colored children of school age, the separate school is established for those who are fewer in number. When the number of pupils for the separate school does not exceed ten, they may be transferred to the nearest school of their own color in the adjoining district. This transfer can be made without the consent of the parents, if the distance does not exceed two and a half miles. If further than that, the parents' consent has to be obtained before the transfer can be made. In a district where there is a separate school there is a separate board of education — a colored board for colored schools and a white board for white schools. The county superintendent certificates colored as well as white teachers.

203. Compulsory Education. The legislature must provide for the compulsory attendance at some public or other school, unless other means of education are provided, of all the children in the state, who are sound in mind and body, between the ages of eight and sixteen years, for at least three months in each year (Art. XIII, sect. 4). Beginning in the fall of 1910, children of school age will be required by law to attend

at least five months each year. A child who is the chief support of a widowed mother can have the matter brought to the attention of the county commissioners, and on proper showing he will receive a reasonable allowance per month for his actual days of attendance (session laws, 1907–1908, p. 395).

204. County Superintendent of Public Instruction. The general supervision of the schools of a county is in the hands of the county superintendent of public instruction. Women as well as men can hold this office. A necessary qualification for this position is to hold a first-grade county certificate or be a graduate of some institution of learning. The county superintendent divides the county into convenient school districts, but he cannot change the boundaries of a district unless one third of the voters of such district so petition. Appeals may be taken from his decision to the county commissioners by a petition of one fourth of the legal voters in the district. He fills vacancies on rural and town school boards, but his jurisdiction does not extend to schools in cities of the first class. He is chairman of the county board of examiners that certificates teachers. He must visit each school at least once during each term, for which he receives one dollar for each school so visited, and he has general supervision of discipline, classification, and instruction of the schools under his charge. Each summer he holds a teachers' institute for at least four weeks. There is, however, no statute requiring teachers to attend these summer normals. Two or more counties may hold a joint institute. Conductors and instructors hold special certificates issued by the state board of education. His salary depends upon the population of the county. It cannot be higher than $1800 and may be as low as $800 per year.

205. Teachers' Certificates. Under the direction of the state board of education the state board of examiners prepares questions, so that all teachers' examinations will be uniform throughout the state. County examinations are held on the last Thursday and Friday of January, April, July, and October, and at the close of the normal institutes. A day or two before the examination the questions are sent sealed to the county superintendent. In the presence of the applicants and the two assistant examiners he breaks the package. First-, second-, and third-grade certificates are issued, according to the experience and proficiency of the applicant.

206. School Tax. The state constitution provides that a school tax may be levied of "not more than five mills on the dollar for the support of the common schools, unless the annual rate be increased by any school district to an amount not to exceed ten mills on the dollar valuation where a majority of the electors thereof vote for the increase. It also provides that any county may levy a school tax not to exceed two mills on the dollar for a county high school[1] and to aid the common schools of the county. Not over one mill of this tax shall be for the county high school, and the aid to common schools shall be apportioned according to law" (Art. X, sect. 9). This tax levy will provide ample means for the support of the state's school system. The above limitations are for maintenance. For the purpose of erecting school buildings in counties, cities, or school districts the rate of taxation may be increased five mills more "when the rate of such increase and the purpose for which it is intended shall have been submitted to vote of the people, and a majority

[1] There is no county high-school law, and this clause in the constitution is now noneffective, except in the three counties mentioned in sect. 201.

of the qualified voters of such county, city, or school district shall vote therefor" (Art. X, sect. 10).

207. County School Fund. Besides the one mill of direct tax above mentioned, the county school fund is also augmented by all fines, sales of estrays, marriage fees, and money paid for release from military duty. This fund is apportioned among the various districts of the county according to school population.

208. State Apportionment. Each year the clerk of every school board must see to it that a careful enumeration of every person of school age, i.e. between the ages of six and twenty-one, is taken. Such enumeration is sent to the county superintendent and by him transmitted to the state superintendent. Twice each year, between the fifteenth and the thirtieth day of January and between the fifteenth and thirtieth day of July, the commissioners of the land office apportion the income of the state school fund, and the annual taxes collected by the state for the support of public schools, to those counties from which proper reports have been made. This money, when received by the county superintendent, is apportioned among the respective districts according to school population. City, as well as town and rural districts, receive their semiannual apportionment through the county superintendent. Funds for the state apportionment are chiefly derived from the rental of the school lands (see Appendix B), and from the interest on the five million dollars donated by Congress (chap. iv, § 60). These lands and the funds derived from them are under the control of the commissioners of the land office. It is the duty of the commissioners to invest the permanent school fund in safe securities, especially Oklahoma farm loans, at five per cent interest.

209. State Superintendent of Public Instruction. The duties of the state superintendent have been considered under the executive department of the state (chap. viii, § 117). He is head of the entire school system of Oklahoma. His office has direct charge of all state examinations, keeps in close touch with the county superintendents, and advises every one interested upon school matters. The state superintendent is ex officio a regent of many of the state schools, and is also a member of numerous important boards.

210. State Board of Education. The supervision of instruction in the public schools is vested in a board of education whose powers and duties shall be prescribed by law. The superintendent of public instruction shall be president of the board. Until otherwise provided by law, the governor, secretary of state, and attorney-general are ex officio members, and, with the superintendent, compose the state board of education (Art. XIII, sect. 5).

211. State Board of Examiners. The state board of examiners consists of eight competent educators, besides the state superintendent, who is ex-officio president of the board. This board of examiners, by and with the consent of the state board of education, adopts rules and regulations and prepares questions for all teachers' examinations held in the state. It decides the requirements for state certificates, prepares the questions, and holds the examination for the same. It examines and certificates all applicants for normal institute conductors or instructors. It prepares questions for all city and county teachers' examinations, but under the present law city boards of education need not use such questions unless they so desire. The state board of examiners also prepares questions for applicants for graduation from the

eighth grade. Pupils who successfully pass this examination are admitted into the subnormal course of the state normals, the preparatory course of the state university and state agricultural college, the university preparatory schools, and the county high schools without examinations. Most city high schools also recognize such diplomas.

CHAPTER XIII

STATE INSTITUTIONS

212. The University Preparatory Schools. There are two university preparatory schools, one located at Tonkawa, in Kay County and one at Claremore, in Rogers County. These schools were founded by the state in order to afford graduates of the common schools a high-school education. The town- or city-school pupils pass from the eighth grade into the high school, but the child from the country has no opportunity to continue his education tuition free, if there is no county or township high school, yet he is unable to enter the state university without additional preparation. The Tonkawa and Claremore schools supply this deficiency. They are under the control of a board of three regents, consisting of the governor and two others appointed by him.

213. Normal Schools. Oklahoma has six normal schools: the Central State Normal, located at Edmond; the Northwestern, at Alva; Southwestern, at Weatherford; Northeastern, at Tahlequah; Southeastern, at Durant; and East Central, at Ada. The object of these schools is to train competent teachers for the schools of the state. Efficient general courses are maintained, however, and high-school work is also provided. Normal schools are governed by a board of regents consisting of five members, three of whom are appointed by the governor. The state superintendent is ex-officio president of said board, and the state treasurer is a member ex officio.

214. Agricultural and Mechanical College. The aim of the agricultural and mechanical college is to promote scientific, agricultural, and mechanical education. At Stillwater, in Payne County, where the school is located, experiment stations are maintained, and shops are provided in order that these occupations may be taught experimentally as well as theoretically. Because of this occupational education, students who desire, are enabled to work overtime and thus pay a portion of their expenses while at college. The constitution stipulates that the state board of agriculture, which must be composed of eleven farmers, shall have control of all agricultural and mechanical colleges (Art. VI, sect. 31 ; chap. vii, § 127).

215. District Agricultural Schools. Because of the commanding importance of the agricultural industries of the state, six agricultural schools have been established, one in each supreme court judicial district, and an extra one for the Panhandle. The Murray Agricultural School at Tishomingo and the Connor Agricultural School at Warner have been in operation the past year. The other four have not yet (April, 1909) been located. Graduates of these schools are qualified to enter the state agricultural college.

216. Colored Agricultural and Normal University. At Langston, in Logan County, the state maintains an agricultural and normal university for the colored race. While this school has general literary and classical courses, especial attention is given to normal training and agricultural and industrial education. Pupils receive instruction in manual training, machine work, carpentry, blacksmithing, domestic science, agriculture, horticulture, and stock feeding. The students care for the grounds, conduct the laundry, and perform all labor at the boarding departments. As at Stillwater,

many students are enabled to partially pay their way through school by employment furnished in the course in industrial training. Besides the state superintendent and the state treasurer, who are ex-officio members of this board, three other regents are appointed by the governor, two of whom must be of the colored race.

217. Industrial School for Girls. The name of this school might lead one to think that it is similar in scope to the Pauls Valley-Wynnewood school discussed in § 226. This is not the case. This school is not for unruly girls, but it is to teach the industrial arts to the girls of the state. Sometimes it is called the " Chickasha Domestic Science School," and this name seems to fit it very well. The second state legislature located this school at Chickasha and voted funds for its erection and maintenance.

218. School of Mines. The legislature of 1908 established a state school of mines at Wilburton, in Latimer County. This institution was deemed necessary because of the state's extensive mining interests. The object of the school is to educate the youth of the state as competent mining engineers. It is under the supervision of a board of regents appointed by the governor.

219. The State University. The apex of Oklahoma's educational system is the state university. The university is intended to enter all the fields of higher learning. It was established in 1892 at Norman, in Cleveland County. The university embraces a college of arts and sciences, of medicine, of mines, of fine arts, of pharmacy, and a preparatory school. The government of the state university is in the hands of a board of regents, consisting of ten members, nine of whom are appointed by the governor, by and with the

consent of the senate; and the governor, during his term of office, is also a member of said board. The term of office of the regents is for four years.

220. Denominational, Private, and Federal Schools. Besides these state institutions there are numerous denominational colleges and academies, as well as private schools, that materially add to the educational resources of the state. The United States government likewise maintains numerous federal Indian schools throughout the state; and also, under the Dawes Commission, the federal government has supported a regular school system, with common-school, academic, normal, and college instruction, in the Indian Territory (chap. iv, § 55). These schools are still being conducted (1909) by means of federal appropriations. They work in conjunction with the public schools of the state.

221. Other Institutions. It is provided by the constitution that "educational, reformatory, and penal institutions, and those for the benefit of the insane, blind, deaf, and mute, and such other institutions as the public good may require, shall be established and supported by the state in such manner as may be prescribed by law" (Art. XXI, sect. 1).

222. Oklahoma School for the Deaf. In September, 1905, a school for the deaf was opened in Guthrie. In January, 1908, it contained one hundred ten pupils. It is now (1909) permanently located at Sulphur, in Murray County. It is governed by a board of regents consisting of three members, two of whom are appointed by the governor. The state superintendent is chairman ex officio.

223. School for the Blind. The Lowery Institute for the Blind has long been maintained at Fort Gibson in the Cherokee Nation. The legislature of 1908 appropriated five

thousand dollars for state aid to this school. Certain conditions in the way of equipment had to be met before this money was available. Here children who are blind, or who have such defective vision that they cannot be educated in the public schools, are educated at state expense.

224. Colored Institute for the Deaf and Blind. At Taft, in Muskogee County, the state will conduct an institute for deaf and blind negro children. Colored orphans will also be cared for at this institute.

225. State Orphan Home. Article X, sect. 6, of the constitution provides that the Whittaker Orphan Home at Pryor Creek, in Mayes County, shall be exempt from taxation. The first state legislature appropriated $39,700 to take over the home, and now it is conducted as a state institution under the supervision of a board of trustees.

226. State Industrial School. In the 1908 report of the state superintendent it was recommended that the state establish an industrial school for youthful offenders. Such a school for truant or insubordinate children, whose conduct may lead to more serious consequences and whose influence in the public schools is bad, was established the next year upon a four-hundred-acre farm halfway between Pauls Valley and Wynnewood. Most states have such institutions. The committing magistrate is generally a judge, although in some states the city superintendent of schools may commit if parents consent.

227. Institute for the Feeble-Minded. The second state legislature (1909) located the Institute for the Feeble-Minded on a section of public land (see Appendix B) adjacent to Enid, in Garfield County. The name of this institution explains its purpose. Here, at state expense, those children are educated

whose minds are too weak to admit of their attendance at the public schools.

228. Asylum for the Insane. The United States government gave to Oklahoma the Fort Supply Military Reservation in Woodward County, to be used as an asylum for the insane. The legislature of 1903 appropriated fifteen thousand dollars to equip this institution. Subsequent legislatures have appropriated additional amounts, and in May of 1908 a portion of the patients were removed from Norman to this state hospital. The remainder are still cared for at Norman, under a contract with a private sanitarium. The second state legislature located the East Side Asylum for the Insane at Vinita, in Craig County. Probably as soon as this institution is able to receive the patients the contract with the Norman sanitarium will be allowed to lapse. In every county there is a commission of insanity, consisting of the county judge and two other persons, — a lawyer and a doctor. This commission examines all persons brought before it on the charge of being *non compos mentis*. If found insane, the patient is taken to one of the asylums.

229. State Reformatory. This is an institution where offenders convicted of felony (any crime for which one is sent to state prison) can be sent in place of to the penitentiary. It is especially designed for youthful criminals, those between the ages of sixteen and twenty-five, whom the state does not wish to associate with the hardened criminals at McAlester. This institution is located at Granite, in Greer County.

230. Penitentiary. Oklahoma Territory had no penitentiary, persons convicted of felony being sent to the Kansas state prison at Lansing. The first legislature passed a law that necessitated the return of these convicts. The statute

provided that these prisoners be used in building a system of macadamized roads across the state. The penitentiary is located at McAlester, where a high stockade is built, in which the convicts are confined until a prison can be erected. The localities, cities, and counties that will be benefited by the road are expected to donate bridges and aid the enterprise in other ways. A permanent prison is now being erected.

CHAPTER XIV

CORPORATIONS

231. Corporation Defined. A corporation (Boynton, p. 216) is a body of individuals who are allowed to act together as a single person. Upon the death of an individual his affairs are brought to an end, his estate is administered, and his business closed. On the death of one partner in a partnership, the partnership at once ceases and the business must be closed up. This is not true of corporations. The death of one or more directors or stockholders in a corporation has no effect on the corporate life. The only way a corporation can become extinct is to lose its charter by failure in business, forfeit its charter by misconduct, surrender its charter because it no longer wishes to continue in business, or have its charter expire by lapse of the time for which it was created.

232. Reason for creating Corporations. It has been found that many industries would suffer if, on the death of one or more interested parties, everything had to be settled up and an accounting made. For example, for universities, colleges, hospitals, and charitable institutions to exist indefinitely, some scheme had to be devised for carrying them on after the men connected with them had passed away. Corporations are the product of this need.

233. Corporate Charters. Every corporation must have a charter, granted by the state, defining what business it can engage in, the term of years for which it is created, and the amount of its capital stock. To meet the numerous demands,

the legislature has enacted a general statute which provides that the secretary of state may issue charters to corporations complying with the law. Foreign corporations must obtain a license to do business in the state. Such a license corresponds to the charter of a company incorporated within the state. And it is further provided that no "public-service corporation organized under the laws of any other state, or of the United States, and doing business, or proposing to do business, in this state, shall be entitled to the benefit of the right of eminent domain in this state until it shall have become a body corporate, pursuant to or in accordance with the laws of this state" (Art. IX, sect. 31).

234. Private Corporations. A private corporation is an association of individuals authorized by law to transact private business as a single person. The association of individuals obtains a charter from the secretary of state, which sets forth the object of the corporation, the term of years for which it is incorporated, the capital stock, and the names of the men who apply for the charter. The men named, having obtained the charter, proceed to elect directors, sell the stock, and to carry on the business for which the corporation has been created. The stockholders of each corporation elect directors according to the terms of the charter. The liability of stockholders, directors, and officers for the debts of a corporation is fixed by law, and is twice the amount of the par value of the stock of each. The constitution provides that no private corporation shall be created, nor foreign corporation licensed, to conduct business in the state, except by general law. This is to prevent special favors being extended to one group of men in the way of corporate privilege, and denied to another.

235. A Public Corporation. A public corporation is one founded by the sovereign people for public purposes, where the whole interests belong to the people. Such a corporation is the United States of America. Here a great body of individuals act together as a single individual. Each of the forty-six states is a great public corporation, as are the counties within the states; and likewise cities and towns are often spoken of as municipal corporations. School districts and municipal townships are also public corporations. The charter of the United States is its constitution, just as is that of the state. In Oklahoma each municipality of over two thousand population can form its own constitution, which is called its charter (chap. ii, § 12). Counties, school districts, and civil districts do not have charters in the sense of these governmental divisions just named, but the general laws under which they are established correspond to charters, and they are clearly self-perpetuating corporate beings.

236. A Semipublic Corporation. A company founded for private gain, but engaging in business of such a character that important governmental powers are granted to it, is known as a semipublic corporation. Such a company is termed in law a quasi-public corporation. Railroad, street-car, canal, and turnpike companies, and all public-service corporations such as waterworks and lighting plants, when owned by individuals, are corporations of this character. They have the right of eminent domain (Boynton, p. 20). The state constitution forbids monopolies; since there is only one railroad, one street-car line, one canal, and one turnpike leading in a given direction from a city, and but one waterworks plant or lighting system in a community, as a general rule, these quasi-public corporations of necessity become monopolies, and

are, for this reason, regulated much more stringently than private corporations.

237. Church and Eleemosynary Corporations. There is still a fourth class of corporations which are not for private gain, nor do they belong to the public. They are called ecclesiastical and eleemosynary corporations. They are established by individuals, not for gain, but for the benefit of certain persons. Churches, colleges, hospitals, and asylums for orphans or the aged come under this heading. Such institutions are created as corporations because they best serve the purpose of the benevolent men and women who gave their money to found them. The charter of such a corporation can stipulate who can receive the benefits of the institution created. To illustrate: Stephen Girard in 1831 founded a boys' school at Philadelphia. Its object, so he stipulated, was to educate poor white male orphans. These orphan boys were to come from the following localities in the order named: Philadelphia, Pennsylvania, New York City, New Orleans; and so to-day the student body of the famous Girard School is composed of orphan boys who come from the places named by the founder.

238. Oklahoma's Control of Corporations. Since corporations are created by law, they are clearly subject to the authority of the people. Corporations in the past have not always recognized this, and to obviate the difficulty one of the most carefully drawn and exhausting clauses in the Oklahoma constitution is that dealing with corporations. Since it has been public-service corporations that have chiefly infringed upon the rights of the people, this portion of the constitution is particularly intended to regulate them. The chief instrument in regulating such corporations is the corporation

commission, composed of three members, each serving for six years (chap. viii, § 126). Commissioners must be residents of the state for over two years next preceding their election, must be qualified voters, thirty years of age, and have no interest, direct or indirect, in any of the countless companies that it may be their duty to regulate.

239. Duties of Commission. "The commission has power and authority, and is charged with the duty of supervising, regulating, and controlling all transportation and transmission companies doing business in the state, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses and discrimination and extortion by such companies. . . . It shall keep itself fully informed of the physical condition of all railroads of the state, as to the manner in which they are operated with reference to the security and accommodation of the public, and shall, from time to time, make and enforce such requirements, rules, and regulations as may be necessary to prevent unjust or unreasonable discrimination and extortion by any transportation or transmission company in favor of, or against, any person, locality, or community, or connecting line" (Art. IX, sect. 18). However, it is well to note that franchises granted by municipal corporations allow privileges to public-service corporations (chap. ii, § 27) which the corporation commission can in no way infringe upon. All corporations, foreign and domestic, "shall file in the office of the corporation commission a list of its stockholders, officers, and directors, with the residence and post-office address of, and the amount of stock held by each, before beginning business" (Art. IX, sect. 43).

240. Foreign Corporations: Resident Oklahoma Agent. Every foreign corporation shall, before being licensed to do

business in the state, designate an agent residing in the state, upon whom summons or legal notice may be served, and such other agents as now are or may hereafter be provided for by law. Suit may be maintained against a foreign corporation in the county where an agent of such corporation may be found, or in the county of the residence of the plaintiff, or in the county where the cause of action may arise. This provision makes it possible for the state authorities to find some responsible person upon whom they can serve writs when necessary. This resident agent of a foreign corporation is the person responsible to the state for any misconduct of the company he represents. A foreign corporation is any company not chartered in Oklahoma.

241. Commission Clothed with Authority of a Court. In all matters pertaining to the public visitation, regulation, or control of corporations, and within the jurisdiction of the commission, it has the power and authority of a court of record to administer oaths, to compel the attendance of witnesses and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and by enforcing its own appropriate process, against the delinquent or offending party or company, levying such fines or other penalties as may be prescribed or authorized by the constitution or by law" (Art. IX, sect. 19).

242. Commission to Supreme Court. From any action of the commission prescribing rates, charges, or classification of traffic, or affecting the train schedule of any transportation company, or requiring additional facilities, conveniences, or

public service of a transmission or a transportation company, an appeal may be taken to the supreme court (Art. IX, sect. 20). When a corporation appeals from the decision of the commission, such appeal does not stop the force and effect of the commission's decision until set aside by the court, and a suspending bond shall first have been executed and filed with, and approved by, the commission or by the supreme court, payable to the state and sufficient in amount and security to insure the prompt refunding, by the appealing corporation to the parties entitled thereto, of all charges which such company may collect or receive pending the appeal, in excess of those fixed or authorized by the final decision of the court on appeal (Art. IX, sect. 21). For example, if the commission should order a railroad company to lower freight rates, the company has a right to appeal to the supreme court. Pending the litigation the railroad company can avoid lowering its rate, but it has to put up a sufficient bond to pay back all this extra charge if the supreme court decides in favor of the commission's lower rate. Such a bond is called a supersedeas. If the railroad can show that the rate is already low enough, when the court hands down its decision, the bond becomes void.

243. Commission's Right to inspect Books. The "commissioners, or either of them, or such persons as they may employ therefor, have the right, at such time as they may deem necessary, to inspect the books and papers of any railroad company or other public-service corporation (chap. v, § 71), and to examine under oath any officer, agent, or employee of such corporations in relation to the business and affairs of the same. If any railroad company or other public-service corporation shall refuse to permit the commissioners, or

either of them, or any person authorized thereto, to examine its books and papers, such railroad company or other public-service corporation shall, until otherwise provided by law, for each offense pay to the state of Oklahoma not less than one hundred and twenty-five dollars for each day it shall so fail or refuse, and the officer or other person so refusing shall be punished as the law shall prescribe" (Art. IX, sect. 28).

244. Physical Value of Railroads; Salaries; Mileage. The commission must make record, the same to be a public record, of the amount of money expended in construction and equipment per mile of every railroad and other public-service corporation in Oklahoma, the amount of money expended to procure the right of way, and the amount of money it would require to construct the roadbed, track, depots, and transportation facilities, and also the amount necessary to replace all the physical properties belonging to the railroad or other public-service corporation. It must also ascertain all the outstanding bonds, debentures, and other indebtedness. The commission also ascertains the amounts paid for salaries to the officers of all public-service corporations, and the wages paid its employees, and from time to time this information shall be communicated to the attorney-general by report, and a duplicate thereof filed with the state examiner and inspector for public use, and the same shall be printed in the annual report of the commission. Between points within the state not more than two cents per mile shall be charged for passenger fare unless otherwise provided by law; the corporation commission shall exempt any railroad from the operation of this section upon satisfactory proof that it cannot earn a just compensation for services rendered, if not permitted to charge more than two cents per mile. A few railroads but recently

constructed are permitted to charge three cents per mile under this clause of the constitution.

245. Fellow-Servant Law. The common-law doctrine of the fellow-servant so far as it affects the master's liability for the injuries of his servant, resulting from the acts or omission of any other servant or servants of the common master, is abrogated as to every employee of every railroad company or interurban railway company, and every street railway company, and of every person, firm, or corporation engaged in mining in this state. Every such employee has the same right to recover for every injury suffered by him for the acts or omissions of any other employee of the common master that a servant would have if such acts or omissions were those of the master himself in the performance of a nonassignable duty. When death, whether instantaneous or not, results to such employee from any injury for which he could recover damages under the above provisions, had not death occurred, then his legal or personal representative or guardian shall have the same rights and remedies with respect thereto as if death had been caused by the negligence of the master. Railroad companies and street railway companies, and persons, firms, or corporations engaged in the underground mining, are liable for the acts of their trustees or receivers. The old common law was that the servant assumed all risk from the negligent acts of his fellow-servants. The above clause provides that the employee shall have the same right to recover for the acts or omissions of a fellow-servant as he would for the acts or omissions of the master. This is a most important provision, for railroads and other public-service corporations have been in the habit of throwing all blame for accidents of one employee upon some other

servant of the company, and in this manner escaped paying damages. No such defense is now valid in Oklahoma.

246. Compulsory Arbitration. Every license issued, or charter granted, to a mining or public-service corporation, foreign or domestic, must contain a stipulation that such corporation will submit to arbitration, as shall be provided by law, any difference it may have with employees in reference to labor.

247. Stock of Corporations must represent Actual Value. No corporation shall issue stock except for money, labor done, or property actually received to the amount of the par value thereof, and all fictitious increase of stock or indebtedness shall be void, and the legislature shall prescribe the necessary regulations to prevent the issue of fictitious stock or indebtedness. The stock and bonded indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held thirty days after notice given in pursuance of law (Art. IX, sect. 39). The stock of a corporation is the money represented in the business. This stock is divided into shares and sold. Each person holding shares has one vote at the annual stockholders' meeting for every share he holds. A certificate is a document signed by the proper officials of the corporation, stating how many shares the owner of the certificate holds.

248. Corporations and Competing Corporations. No corporation chartered or licensed to do business in this state can own, hold, or control, in any manner whatever, the stock of any competitive corporation engaged in the same kind of business in or out of the state, except such stock as may be pledged in good faith to secure bona fide indebtedness

acquired upon foreclosure, execution sale, or otherwise for the satisfaction of debt. No trust company, or bank, or banking company, shall own, hold, or control, in any manner whatever, the stock of any other trust company, or bank or banking company, except such stock as may be pledged in good faith to secure bona fide indebtedness, acquired upon foreclosure, execution sale, or otherwise for the satisfaction of debt. All stock thus acquired by any corporation must be disposed of within one year. Corporations have been in the habit of obtaining control of other corporations in the same line of business, and thus strangling competition. This is prohibited in Oklahoma.

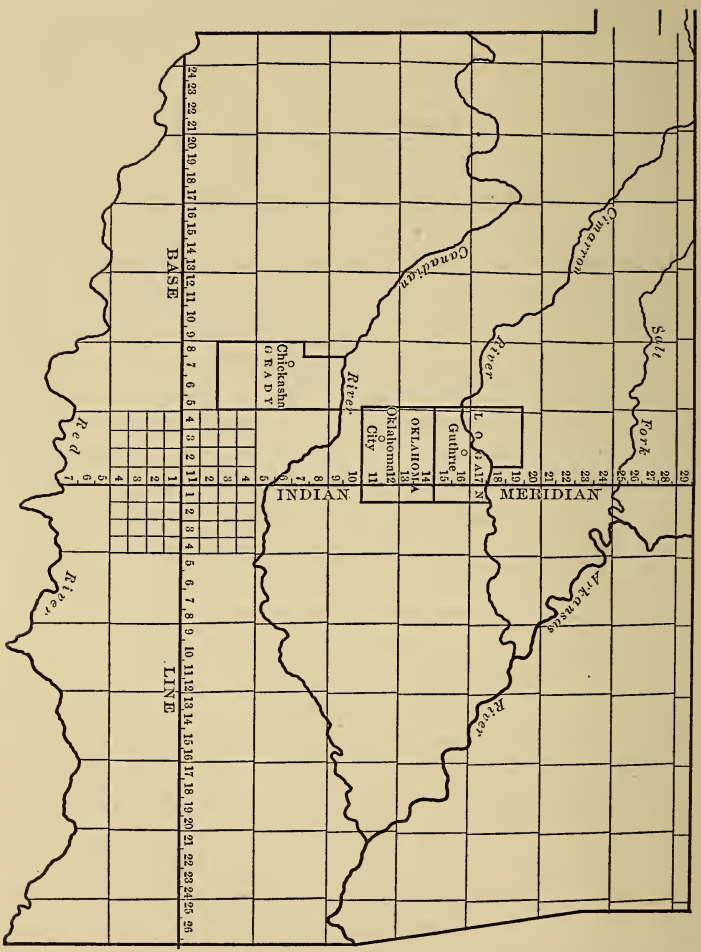
249. Legislative Control of Corporations. The legislature has power to alter, amend, revoke, or repeal any charter of incorporation or franchise now existing and subject to be altered, amended, annulled, revoked, or repealed at the time of the adoption of the constitution, or any that may be hereafter created, whenever in its opinion further operation of the corporation is injurious to the citizens of the state. This annulling of a corporation's charter must be done in such manner, however, that no injustice shall be done to the corporation.

APPENDIX A

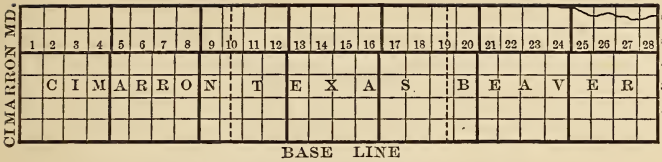
UNITED STATES LAND SURVEY

1. Land Surveys. The Department of the Interior has charge of the public lands. Before the land can be sold it is necessary that boundaries be accurately fixed. For this purpose a system of land surveys was adopted during Washington's administration. According to this system the land is first divided into squares by meridians and parallels, six miles apart. These squares are called townships, and serve the double purpose of locating lands and of furnishing the boundaries for local governments. A row of townships running north and south is called a range. The surveyors begin their work by selecting some natural object, easily distinguished; and from this, as an initial point, they mark off, north and south, a true meridian, called in the system a principal meridian. In Oklahoma the principal meridian is known as the Indian meridian. Crossing the principal meridian at right angles, they establish a true parallel, called the base line. In this state the base line cuts the state from east to west, just far enough north to avoid the bends of Red River. Range lines are run north and south, six miles apart, on either side of the principal meridian. These lines and the ranges of townships they mark off are numbered east and west from the Indian meridian. Range fifteen west means the row of townships ninety miles west from the principal meridian. Range twenty east is the twentieth range east, one hundred and twenty miles east from the principal meridian. Note that the Panhandle has a system of land survey distinct from that used in the rest of Oklahoma.

Township lines are run six miles apart, parallel with the base line. They are numbered north or south from the base line. Township



Map illustrating Oklahoma Land Survey



North and south of the base line standard parallels are run every twenty-four miles. They are known as first, second, third, etc., standard parallels north or south, as the case may be. East and west of the Indian meridian guide meridians are run every twenty-four miles. They are known as first, second, etc., guide meridian east or west.

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

Each one of the little squares upon the large map represents thirty-six sections, or one township. There should be twenty-six east and twenty-six west of the Indian meridian (but four are shown), and twenty-nine range lines north of the base line, and as many south as the bends of Red River permit. The Panhandle has a system distinct from the rest of Oklahoma. The enlarged township with section numbers makes clear how each one of the small squares on the map above is divided. The common-school sections are sixteen and thirty-six, the state school section is thirteen. Section thirty-three is to be used by the state for public-building purposes (see Appendix B).

number three south means a township whose south line is situated eighteen miles south of the base line.

2. Correction Lines. If surveys are accurately made, the township lines are just six miles apart throughout. But since the range lines run north and south, they are not parallel, but converge towards the pole of the earth's axis. Two lines, in latitude thirty-four north, starting six miles apart and running due north six miles, will be about three rods nearer together than at the starting points. Range lines start six miles apart at the base line; consequently, north of the base line they are less than six miles apart. In latitude thirty-four degrees, at a distance of sixty miles from the base line, the township lacks thirty rods of being six miles east and west. To prevent this narrowing process from destroying the system, the

surveyors measure out from the principal meridian, and establish a new base line called a standard parallel, but commonly known as a correction line. Every twenty-four miles north and south of the base line such a standard parallel is established. East and west of the principal meridian every twenty-four miles a guide meridian is run. This is a range line that is much more carefully surveyed than the others, and here all errors in survey are corrected.

3. Sections. Each township is subdivided into thirty-six sections of six hundred and forty acres each. The surveyors begin at the southeast corner of the township to mark the boundaries of the sections. If the work is accurate, all sections are perfect except those on the west side; these are always imperfect or fractional. On the north side, also, it generally happens that, on account of inaccuracies, the survey of the sections does not correspond with the township survey; hence a lot on the north side of the township is generally fractional, containing more or less than the ordinary quantity. The United States survey ends with the location of the section lines. Marks are made by the surveyors at the corners of the sections, and also half-mile marks between the corners. Purchasers measure from these marks to determine the situation of their land. The following is a complete description of one hundred and sixty acres of land, according to United States survey: "The northwest one fourth (N.W. $\frac{1}{4}$) of section number twenty (20) in township four (4) south; range nine (9) west of the Indian meridian."

APPENDIX B

OKLAHOMA'S PUBLIC LANDS

The public lands of Oklahoma consist of four classes: (1) common-school lands, sections sixteen and thirty-six in each township; (2) college lands, section thirteen; (3) public building lands, section thirty-three; (4) indemnity lands, i.e. sections or parts of sections chosen in lieu of the above-named sections, when they had been previously allotted to Indians or lost to the state in some other way.

	Number of Acres	Acres of Indemnity Land in each Class
Common-school lands	1,413,803	214,651
College lands	352,207	44,874
Public-building lands	515,065	46,663
Lands granted to colleges by enabling act	1,050,000	
Total	3,331,075	

These three million three hundred and thirty-one thousand and seventy-five acres include the three hundred and six thousand one hundred and eighty-eight acres of indemnity land.

This is in accordance with a report made by the commissioners of the land office to the first state legislature.

The public lands of Oklahoma lie entirely in the western or Oklahoma Territory portion of the state. This is because the lands on the east side belonged to the Indian nations and not to the federal government. It has been the policy of the federal government ever since the ordinance of 1787 to give some of its public lands to each state for the benefit of public schools. Oklahoma, it will be

seen, was given two sections in every township for common schools, one section to aid state schools and one section to be used in the erection of public buildings.

These lands can be sold and the interest used for the respective schools for which it was set aside, or the lands can be retained and the rent used for school purposes. Of course when the public-building lands are sold the funds will all go to erect state buildings. At the November election in 1908 a referendum was held as to whether all the public lands of the state should be sold, and it was decided by a large majority that they should not be. The second legislature passed an act which provided for the sale of the public-building lands (section thirty-three) and for all the indemnity, or lien lands, as well as for the college sections given the state by the enabling act (chap. iv, § 60). The common-school sections and the college section are to be retained as a permanent endowment for our public-school system. The reason given for the sale of section thirty-three is that the money is used to erect public buildings. The indemnity and enabling-act lands frequently lie in such large bodies that often there is but little taxable land in a township, and therefore no way to maintain local government in the community. Thus the legislature decided to sell it.

APPENDIX C

THE RIBBON BALLOT

The legislature of 1909 materially altered the ballot law discussed in Chapter X, but the measure as passed has excited the opposition of certain citizens and the referendum has been invoked against it (chap. vii, § 101). So until this matter is settled the law as given in the body of the text is in force. If, when the referendum is taken, a plurality is registered against the new law, it will never go into effect. If, on the other hand, the larger number of voters favor the new measure, then it becomes a statute. This proposition need not be voted upon until the next general election, — November, 1910,— although the governor can call a special election to decide the matter earlier if he so desires (chap. vii, § 104).

The "ribbon ballot law," as the new measure has come to be termed, because of the narrow, extended nature of the ticket, makes such conditions for voting that it is practically impossible for one to vote at all without being able to read. The names are printed on the ticket in one or more columns. All the candidates for any office are grouped under the respective captions, as is shown in the illustration (p. 136). All these names must appear without any party device or designation. More than this, the names are not to come in any fixed order, and they can be shifted about by the election boards that have control of the printing of the ballots.

Thus it is clear that no ignorant man can vote wholesale for an entire ticket by putting his cross under the "rooster" or the "eagle," as under the present system (see p. 76). The elector will have to know enough about the candidates to recognize who

they are, and what party they represent, and how to read their names, or he cannot hope to vote. For it is made a serious offense to have a copy of the ballot previous to going into the election booth, nor can any sample ballot be made or circulated, although there can be "dummy ballots," like the one herewith presented, to show the general appearance of the ticket. But on the dummy ballot either fictitious names must appear or the lines left blank.

DUMMY BALLOT ARRANGED IN ACCORDANCE WITH THE NEW RIBBON BALLOT LAW

DUMMY BALLOT	
GOVERNOR VOTE FOR ONE	
	Frank Franz
	Charles N. Haskell
	Richard Roe
	John H. Porter
SECRETARY OF STATE VOTE FOR ONE	
	Bill Cross
	John Doe
	William F. Kerr
	Robert Riley
ATTORNEY-GENERAL VOTE FOR ONE	
	Hartley Alexander
	Charles West
	John J. Smith

To vote mark (x) in the square to the left of the name of the candidate.

These are the chief changes from the election law discussed in the body of the text. Other provisions require that every voter must register, just as those who live in cities of the first class are

now required to do (chap. x, § 162). "State questions" or referenda are to be printed upon the ballot along with the names of candidates, and not on separate tickets as now.

Those who oppose the law do so chiefly on two grounds: (1) It is alleged that the power to put names on the ticket in any order will permit a partisan election board to place the names of its party candidates in the same position every time, and the ignorant voter can be told to vote for the first or second name, as the case might be, under each caption. Thus he can vote almost as easily as with the party device. But the names of candidates from other parties will follow no set order and thus the voter will be confused. It is demanded that a fixed order, or an alphabetical arrangement, be substituted. (2) The election inspector is made the registration clerk in each voting precinct. He is allowed one dollar per day for thirty days for hunting up those eligible to register. It is argued that he will look up those of his own party and compel voters of other parties, who wish to register, to hunt him up. In this way many voters will be disfranchised.

Those who favor the law assert that it is to be noted that objections are all based upon the hypothesis that the election boards are disposed to take unfair advantage of some one. It is urged that the law will be honestly and fairly administered, and that the new measure is a material improvement over the old method of wholesale voting under a party device. It is also pointed out that it will stimulate the ignorant to seek an education so that they can vote, and that it will merely disfranchise those who are in no way fitted to exercise the franchise.

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